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THE HISTORY and PROCEEDINGS Of the HOUSE of COMMONS OF *ENGLAND.*

WITH THE

SPEECHES, DEBATES, and CONFERENCES between the Two HOUSES;

THROUGH EVERY SESSION

From the Year 1660.

Faithfully collected from the best Authorities,
AND
Compared with the JOURNALS of PARLIAMENT.

TOME III.

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Third

SPEECHES, DEBATES, &c.

IN THE

Houſe of Commons,

FROM THE

RESTORATION.

THE Parliament having met according to the Writ of Summons, and the King being ſeated on the Throne, the Commons were ſent for up, to whom my Lord Keeper ſignified his Majeſty's Pleaſure, that they ſhould forthwith proceed to the Choice of a Speaker. Anno 7 W. III. 1695. Third Parliament.

After which the Commons returned to their Houſe, and unanimouſly made choice of Paul Foley Eſq; who being preſented the next Day, his Majeſty did graciouſly approve of him, and then made this Speech to both Houſes. Mr. Foley Speaker.

'My Lords and Gentlemen,

'IT is with great Satisfaction that I meet you here this Day, being aſſured of a good Diſpoſition in my Parliament, when I have had ſuch Proofs of the Affection of my People, by their Behaviour during my abſence, and at my return. King's Speech.

'I was engaged in this preſent War by the Advice of my firſt Parliament; who thought it neceſſary for the Defence

Anno 7 W. III. 1695.

‘ of our Religion, and the Preſervation of the Liberties of ‘ Europe. The laſt Parliament with great chearfulneſs did ‘ aſſiſt me to carry it on; and I cannot doubt but that your ‘ concern for the common Safety, will oblige you to be una- ‘ nimouſly zealous in the Proſecution of it: And I am glad ‘ that the Advantages which we have had this Year, give ‘ us a reaſonable Ground of hoping for a further Succeſs ‘ hereafter.

‘ Upon this Occaſion, I cannot but take Notice of the ‘ Courage and Bravery which the Engliſh Troops have ‘ ſhewn this laſt Summer; which I may ſay has anſwered ‘ their higheſt Character in any Age: And it will not be ‘ denied, that, without the Concurrence of the Valour and ‘ Power of England, it were impoſſible to put a ſtop to the ‘ Ambition and Greatneſs of France.

‘ Gentlemen of the Houſe of Commons,

‘ I think it a great Misfortune that, from the beginning ‘ of my Reign, I have been forced to ask ſo many, and ſuch ‘ large Aids of my People; and yet I am confident you will ‘ agree with me in Opinion, that there will be at leaſt as ‘ great Supplies requiſite for carrying on the War by Sea and ‘ Land this Year, as was granted in the laſt Seſſion; the ‘ rather, becauſe our Enemies are augmenting their Troops, ‘ and the neceſſity of increaſing our Shipping does plainly ‘ appear.

‘ The Funds which have been given, have proved very ‘ deficient.

‘ The Condition of the Civil-Liſt is ſuch, that it will not ‘ be poſſible for me to ſubſiſt, unleſs that matter be taken ‘ into your care.

‘ And Compaſſion obliges me to mention the miſerable ‘ Circumſtances of the French Proteſtants, who ſuffer for ‘ their Religion.

‘ And therefore Gentlemen, I moſt earneſtly recommend ‘ to you, to provide a Supply ſuitable to theſe ſeveral Oc- ‘ caſions.

‘ I muſt likewiſe take notice of a great Difficulty we lie ‘ under at this Time, by reaſon of the ill State of the Coin, ‘ the Redreſs of which may perhaps prove a further Charge ‘ to the Nation; but this is a Matter of ſuch general Concern, ‘ and of ſo very great importance, that I have thought fit to ‘ leave it entirely to the Conſideration of my Parliament.

‘ I did recommend to the laſt Parliament, the forming ‘ ſome good Bill for the Encouragement and Increaſe of ‘ Seamen; I hope you will not let this Seſſion paſs without ‘ doing ſomewhat in it; and that you will conſider of ſuch ‘ Laws as may be proper for the Advancement of Trade, ‘ and will have a particular Regard to that of the Eaſt-Indies,

'leſt it ſhould be loſt to the Nation. And while the War 'makes it neceſſary to have an Army abroad, I could wiſh 'ſome way might be thought of, to raiſe the neceſſary Re-'cruits, without giving Occaſion of Complaint.

'My deſire to meet my People in a new Parliament, has 'made the opening of this Seſſion very late; which I hope 'you will have ſuch Regard to, as to make all poſſible diſ-'patch of the great Buſineſs before you; and will call to 'mind, that by the long continuance of the laſt Seſſion, we 'did not only loſe Advantages which we might have had 'at the beginning of the Campaign, but gave the Enemy 'ſuch an Opportunity as might have proved very fatal to 'us. And I am the more concerned to preſs this, becauſe 'of the great Preparations which the French make to be 'early in the Field this Year.

'My Lords,

'I have had ſuch Experience of your good Affections; 'and I have ſuch an entire Satisfaction in the Choice which 'my People have made of you, Gentlemen of the Houſe of 'Commons, that I promiſe my ſelf a happy Concluſion of 'this Seſſion, unleſs you ſuffer your ſelves to be miſled into 'Heats and Diviſions; which being the only Hope our En-'emies have now left, I make no doubt but you will entirely 'diſappoint by your Prudence and Love to your Country.'

Addreſſes of both Houſes.

Both Houſes, in their reſpective Addreſſes, with great Zeal and Unanimity, congratulated the glorious Succeſs of his Majeſty's Arms abroad, and his ſafe Return home; and likewiſe returned his Majeſty Thanks for the Truſt and Confidence he repoſed in their Affections; aſſuring him, that they would ſupport his Majeſty and his Government againſt all his Enemies foreign and domeſtic, and effectually aſſiſt him in the Proſecution of the preſent War, in which he was engaged for the Safety of England, and Liberty of Europe. The Commons Addreſs being preſented by the whole Houſe, His Majeſty gave them this Anſwer:

The King's Anſwer to that of the Commons.

'Gentlemen, I heartily thank you for the Marks you give 'me of your Affection: Our Intereſts are inſeparable, and 'there is nothing I wiſh ſo much as the Happineſs of this 'Country, where God has placed me.'

Bill for regulating Trials in Caſes of Treaſon.

The Bill *for regulating Trials in Caſes of Treaſon, and Miſpriſion of Treaſon*, which had been ſeveral times loſt in the former Parliaments, was again brought into the Houſe of Commons, Novemb. 26, and in a ſhort time read three times there, and ſent up to the Lords for their Concurrence, by which many Hardſhips upon the Liberty of the Subject were removed, or mitigated: For it was hereby enacted, 'That all Perſons indicted for High-Treaſon, or Miſpriſion

Anno 7 W. III. 1695.

of it, ſhall have a Copy of the Indictment five Days before their Trial, and ſhall be admitted to make their Defence by Councils learned in the Law, not exceeding two. That no Perſon ſhall be indicted or attainted, but by the Oaths of two lawful Witneſſes. That no Perſon ſhall be proſecuted, unleſs the Indictment be found within three Years after the Offence committed. That all Perſons indicted ſhall have Copies of the Jury two days before their Trial; and ſhall have like Proceſs to compel their Witneſſes to appear before them, as is uſually granted to Witneſſes againſt them. To this Bill the Lords added the Clauſe they had always inſiſted upon; that upon the Trial of any Peer or Peereſs for Treaſon or Miſpriſion, all the Peers who have a Right to ſit and vote in Parliament, ſhall be duly ſummoned twenty Days at leaſt before ſuch Trial, and ſhall not vote without firſt taking the Oaths appointed by the Act 1 William and Mary, and ſubſcribing and repeating the Declaration mentioned in the Act made 30 Car. II. which Clauſe was agreed to by the Commons. [It is remarkable, that, whilſt this Bill was depending in the Houſe of Commons, the Lord Shaftesbury roſe up in order to ſpeak for it; and having begun his Speech, he ſeemed to be ſo ſurprized, that for a while he could not go on; but having recovered himſelf, he took Occaſion from his very ſurprize, to enforce the neceſſity of allowing Council to Priſoners who were to appear before their Judges, ſince he who was not only innocent and unaccuſed, but one of their own Members, was ſo daſh'd when he was to ſpeak before that auguſt Aſſembly. This Turn of Wit did great ſervice in promoting that excellent Bill.]

Proceedings on the State of the Coin.

The Lords were conſidering that part of the King's Speech that related to the ill State of the Coin, and had drawn up an Addreſs, to which, in a Conference, they deſired the Concurrence of the Commons, who choſe rather to proceed in their own way, by appointing a Committee, who ſhould have Power to conſider of a Fund to make good the Deficiency of the clipt Money. And here the great Queſtion was, Whether it was neceſſary or expedient to recoin the Silver-Money? The Country-Party held the Negative; the Court-Party the Affirmative; and the Arguments were weighed on both ſides. The Reaſons againſt calling in, and recoining the Money were, That this was no fit Juncture for it, while the Nation was engaged in a burthenſome and doubtful War, by which the Kingdom had already greatly ſuffered, and of which it grew every day more ſenſible. That therefore the People, on whoſe good Affection the Government ſo much depended, ſhould not be provoked by freſh Grievances, greater than any they had yet felt, as thoſe would certainly be, that muſt ariſe from the calling

Arguments againſt recoining the Silver.

calling in the Silver-Coin. That if this was done, however things might be managed and accommodated at home, it were impoſſible to maintain the Commerce or the War, abroad; for neither the Merchant could be paid his Bills of Exchange, nor the Soldier receive his Subſiſtence. That this was to lay the Ax to the Root, and to dig up the Foundation of the Government. That if this Deſign was proſecuted, Trade muſt ſtand ſtill for want of mutual Payments; whence ſuch Diſorder and Confuſion would certainly follow, as would diſcourage and diſhearten the People in the higheſt meaſure, if not drive them to a perfect Deſpair, as Deſpair would to the moſt terrible Extremities. That therefore the recoining the Money at this time was by no means to be attempted without hazarding all.' Anno 7 W. III. 1695.

It was alledged by thoſe of the contrary Opinion, at the Head of whom appeared Mr. Charles Montague, Chancellor of the Exchequer, that the Miſchief would be fatal, if a preſent Remedy was not found out and applied. That by reaſon of the ill State of the Coin, the Change abroad was infinitely to the Nations Prejudice. That the Supplies that were raiſed to maintain the Army would never attain their end, being ſo much diminiſhed and devoured by the unequal Change, and exorbitant *Premiums* before they reached the Camp. That this was the unhappy Cauſe that the Guineas advanced to thirty Shillings, and foreign Gold in proportion: That therefore to the Nation's great Loſs, not only the Dutch, but indeed all Europe ſent that Commodity to this Market, and would continue to do ſo, till the Nation ſhould be impoveriſhed and undone by plenty of Gold. That we muſt exchange for their Gold our Goods, or our Silver, till at laſt we ſhould have only Guineas to trade withal; which no body could think our Neighbours would be ſo kind to receive back, at the value they were at here. That therefore this Diſeaſe would every day take deeper root, infect the very Vitals of the Nation; and, if not remedied, would ſoon become incurable. That our Enemies muſt be mightily intimidated by ſo great an Action, and would ſooner be induced to agree to honourable Terms of Peace, in caſe they ſaw us able to ſurmount this Difficulty, by the retrieving the ill State of the Coin, on which their hopes of the Nation's ſpeedy Ruin ſo much depended; and that it would juſtly create a mighty Eſteem abroad, of the Greatneſs and Wiſdom of the Parliament of England, which was able to conquer ſuch an obſtinate and almoſt inſuperable Evil, in ſuch a Juncture of Affairs.' Arguments for recoining the Silver-Money.

Theſe Matters being fully debated, the Parliament reſolved to call in and recoin the Silver-Money, chuſing rather to run the hazard of ſome great Inconveniencies, than by a

longer

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longer neglect to expose the Kingdom to apparent Ruin. The next Step was to consider, Whether the several Denominations of the new Money should have the same Weight and Fineness as the old; or, whether the established Standard should be raised? This Question produced many Debates: Those who were for raising the Standard, did argue, that the Price of an Ounce of Silver-Bullion was advanced to six Shillings and three Pence, and therefore the Standard ought to be raised to an Equality. That the raising the Standard would prevent the Exportation of our Coin, and the melting of it down, which of late Years has been much practised, to the great Prejudice of this Kingdom; and that it would encourage People to bring in their Plate and Bullion into the Mint. The Court-Party, who were for preserving the old Standard, urged, That as to the Price of Bullion, now raised to six Shillings and three Pence, it was impossible the Price of Silver could rise and fall in respect of itself, but the Alteration of the Value of Bullion was merely in relation to Diminished Money; for it was still Matter of Fact, that with five Shillings and two Pence of New-milled Money, they could buy an Ounce of Bullion; whilst those who bought it with Clipp'd-Pieces, paid six Shillings three Pence.

Debate about raising or continuing the Old-Standard.

As to the Agreement of preventing the Exportation of Money by raising the Standard, it was answered, There was no Way possible to keep our Money at home, but by out-trading our Neighbours; that is, by sending them more Commodities, or of greater Value, than those we received from them, *&c.*

After these Debates, the Commons *Resolv'd*, on December 10. That all Clipp'd-Money be Re-coined according to the established Standard of the Mint, both as to the Weight and Fineness. That the Loss of such Clipp'd-Money shall be borne by the Public. That a Day be appointed, after which no Crowns or Half-Crowns be allowed in any Payment. That another Day be appointed for all Persons to bring in their Clipp'd-Money to be re-coined into Milled-Money; And that a Fund be settled for supplying the Deficiencies. After this, Mr. Chancellor of the Exchequer reported the Form of an Address, to desire his Majesty to regulate the Currency of Clipp'd-Money, according to the foregoing Resolutions; which Address being presented to the King, he caused his royal Proclamation to be issued out for that purpose. And the Lords had already addressed his Majesty to the same Effect.

Resolutions about the Coin.

Some time before, the Commons, having considered, that the maintaining an Army abroad occasioned the Exportation of the Coin, which could not be prevented, but by sup-

ſupplying the ſaid Army with Neceſſaries out of this Kingdom; on December 13. ordered an Addreſs to be preſented to his Majeſty, 'That he would pleaſe to procure, that all Commodities and Proviſions, that ſhould be tranſported from England, for the Uſe of the Forces in his Majeſty's Pay abroad, might be exempted from any Duty or Exciſe throughout the Spaniſh and United Netherlands.

To which the King anſwered, 'That what was deſired 'by the Commons, had been done in a great meaſure for 'ſeveral Years; and that he would ſee what could be further 'done in it.'

An Addreſs againſt the Scots African and India Company.

The Scots Parliament having this Year paſs'd an Act, for erecting a Company to trade to Africa and the Eaſt-Indies; the Parliament of England took the Alarm, as if it had been a Project to deſtroy that Trade in this Kingdom. Both Lords and Commons preſented an Addreſs to the King againſt it, Dec. 17th. To which his Majeſty was pleas'd to anſwer, 'I have been ill-ſerv'd in Scotland, but I hope 'ſome Remedies may be found to prevent the Inconvenien-'ces, which may ariſe from this Act.'

Bill for regulating the Coinage.

The Commons having conſidered the Bill for regulating the Coinage of the Silver-Money, which the Chancellor of the Exchequer had prepared, and preſented to the Houſe on December 17. ordered on December 23d, a Clauſe of Loan to be inſerted in it, in favour of ſuch as would advance Money on Credit of the Exchequer in general, transferrable to ſuch Funds as ſhould be ſettled by Parliament, towards making good the Deficiencies of the Clipped-Money; and likewiſe ordered the ſame Committee to take care, that Perſons who ſhould bring in Clipped-Money (above what was for Taxes) ſhould have a Recompence for the ſame. This Bill was amended accordingly, and four days after paſſed, and ſent up to the Lords for their Concurrence.

Ways and Means to ſupply the Deficiency of Clipp'd Money.

On the 31ſt of December, the Commons *reſolved* to raiſe the 1,200,000l. for ſupplying the Deficiency of the Clipped-Money, by a Duty laid upon all Dwelling-Houſes, except Cottages; to wit, two Shillings yearly upon each Houſe; four Shillings upon every Houſe having ten Windows; and eight Shillings upon ſuch Houſes as have twenty Windows, over and above the ſaid two Shillings: which Duty was to be paid by the Inhabitants of the ſaid Houſes, and to be continued for the ſpace of ſeven Years, and no longer.

The Days appointed by the King's Proclamation for putting a Stop to the Currency of Clipped-Money, were ſo ſhort, that an immediate Stop was thereby put to Trade: So as the Houſe of Commons were obliged in a grand Committee to conſider the State of the Nation, and how to prevent

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vent the Stop of Commerce during the Re-coining of the Clipped-Moneys. After ſome Debates for ſeveral days, the Commons *reſolved*, on January the 9th,

Reſolutions for the preſent Relief of Commerce.

Firſt, That the Recompence for ſupplying the Deficiency of Clipped-Money, ſhould extend to all Clipped-Money which was Silver, although of a coarſer Alloy than the Standard.

Secondly, That the Collectors and Receivers of his Majeſty's Aids and Revenues, be enjoined to receive all ſuch Moneys.

Thirdly, That a Reward of five Pounds *per Cent.* be given to all Perſons, who ſhould bring in either Milled or broad Unclipped Money, to be applied in exchange of the Clipped-Money throughout the Kingdom.

Fourthly, That a Reward alſo of Three-Pence *per* Ounce, be given to all Perſons, who ſhould bring in Wrought-Plate to the Mint to be re-coined.

Fifthly, That for the ſooner bringing in the Clipped-Money to be re-coined, any Perſons might pay in their whole next Year's Tax of four Shillings in the Pound, in the ſaid Clipped-Money, at one convenient time appointed for that Purpoſe.

Laſtly, That Commiſſioners be appointed in every County to pay and diſtribute the Milled and broad Unclipped-Money and the New-coined Money, and to receive the Clipped-Money. And at the ſame time appointed a Committee, to prepare and bring in a Bill upon the ſaid Reſolutions.

Royal Aſſent given to ſeveral Bills.

His Majeſty came to the Houſe of Peers, Jan. 11. and gave the Royal Aſſent to an *Act for enlarging the Times to purchaſe certain Annuities, and continuing the Duties on low Wines*, &c. *An Act for regulating Trials in Caſes of High-Treaſon.*

Farther Proceedings on the Coinage.

Jan 21, The Bill relating to the Coinage was read a ſecond time, and committed to a Committee of the whole Houſe; who *reſolved, That a further Encouragement be given for bringing in Plate to be coined, and Broad-Money in order to be exchanged for Clipped-Money*: And that a Clauſe be inſerted in the ſaid Bill, *to prevent the Melting-down and Exportation of Coin, or any Bullion*; and another Clauſe *to prohibit the Uſe of Plate in Public-Houſes*; which, at laſt, proved the beſt Expedient to ſupply the Mints with Bullion.

The Lords having made ſeveral Amendments to the Bill *for regulating the Coinage of the Silver-Money of this Kingdom*; moſt of them, after ſeveral Debates and Conferences, were diſagreed to by the Commons: Whereupon Mr. Chancellor of the Exchequer, according to Order, preſented to the Houſe another Bill *for remedying the ill State of the Coin of this Kingdom*; which was received, and after ſome Amend-

ments

ments, ordered to be engroſſed, and ſent up to the Lords, who gave their Concurrence to it. Anno 8 W. III. 1696.

There was another Affair depending in this Seſſion, which very ſenſibly concerned his Majeſty. The Earl of Portland had begged of his Majeſty the Lordſhips of Denbigh, Bromfield, and Yale, and other Lands in the Principality of Wales; which his Majeſty, before he went laſt to Holland, had readily granted to him and his Heirs for ever: The Warrant coming to the Lords of the Treaſury, the Gentlemen of the County, upon ſhort Notice, were heard on May the 10th, before their Lordſhips. Grants to the Earl of Portland.

Sir William Williams then alledged, 'That theſe Lordſhips were the ancient Demeſnes of the Prince of Wales. That the Welſh were never ſubject to any but God and the King. That in the Statute for granting Fee-farm Rents, there was an Exception of the Rents belonging to the Principality of Wales; which imported, that the Parliaments took thoſe Revenues to be unalienable. That upon Creation of a Prince of Wales, there were many Acknowledgments payable out of thoſe Lordſhips; and though there were at preſent no Prince of Wales, yet he hoped to ſee one of the King's own Body, *&c.*' Canvaſs'd before the Lords of the Treaſury.

Sir Roger Puleſton alledged, 'That the Revenues of theſe Lordſhips did ſupport the Government of Wales, by paying the Judges and other Officers their ſtated Salaries; and if given away, there would be a Failure of Juſtice.'

And Mr. Price, a Gentleman of great Parts (ſince one of the Barons of the Exchequer) did boldly urge, 'That the Grant was of a large Extent, being five Parts in ſix of a whole County, which was too great a Power for any foreign Subject to have; and that the People of the Country were too great, to be ſubject to any Foreigner: Let it be conſidered, (ſays he) can it be for his Majeſty's Honour or Intereſt, (when the People hear this and underſtand it) that he daily gives away the Revenues of his Crown; and what is more, the Perpetuity of them to his foreign Subjects? Good Kings, after a long and chargeable War, were wont to tell the People, that they were ſorry for the Hardſhips the Nation underwent by long Wars and heavy Taxes; and that now they would live upon their own Revenues: But it is to be feared, if Grants are made ſo large and ſo frequent, there would be nothing for the King or his Succeſſors to call their own to live upon.' He concluded thus: 'It is to be hoped your Lordſhips will conſider, that we had but one Day's Notice of this Attendance, and muſt come therefore very much unprovided: Yet we doubt not, but that theſe Hints and broken Thoughts we have offered to your Lordſhips, you will, by your great Judgments, improve; whereby the ill Conſe-

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quences of this Grant may truly be repreſented to his Majeſty.'

The Lord Godolphin, the firſt Commiſſioner of the Treaſury, asked for Satisfaction, Whether the Earl of Leiceſter had not thoſe Lordſhips in grant to him in Queen Elizabeth's time? Sir Robert Cotton anſwered, he believed he could give the beſt Account in that Caſe; that the Earl of Leiceſter had but one of thoſe Lordſhips, and that was Denbigh: That he was ſo oppreſſive to the Gentry of the Country, that he occaſioned them to take up Arms, and to oppoſe him; for which, three or four of his (Sir Robert Cotton's) Relations were hanged; but that it ended not there, for the Quarrel was kept ſtill on foot, and the Earl glad to be in Peace, and to grant it back to the Queen: Since which Time it had ever been in the Crown. Whereupon the Lord Godolphin ſaid, They had offered many weighty Reaſons, which they ſhould repreſent to his Majeſty.

From the Treaſury, the Gentlemen of Wales attended the Grant, to the Privy-Seal, where their Reaſons and Complaints againſt it, were heard and received with all Candour and Goodneſs. Yet notwithſtanding all this, the ſaid Grant being only ſuperſeded, but not recalled, Sir Thomas Groſvenor, Sir Richard Middleton, Sir John Conway, Sir Robert Cotton, Sir William Williams, Sir Roger Puleſton, Edward Vaughan, Edward Brereton, and Robert Price Eſqs; addreſſed themſelves by Petition to the Commons.

Upon this Occaſion the ſame Mr. Price, a Member of that Houſe, made the following memorable Speech; wherein he ſaid,

Mr. Price's Speech againſt the Grants.

'Mr. Speaker, The Petition now preſented unto you, in Behalf of ourſelves and Country-men, tho' ſubſcribed by few Hands, yet has the Senſe and Approbation of thouſands; who are not influenc'd by their own Intereſt, but by the Honour they have for the Crown, and the Welfare of the Britiſh Nation.

'If I could conceive that the Glory and Grandeur of England was, or could be upheld by a poor, Landleſs Crown, and a miſerable, neceſſitous People, I could then be eaſily perſuaded to believe, that his Majeſty was well-advis'd to grant away all the Revenues of the Crown, and that his Government thereby could be well-ſecured, and his People beſt protected when they had nothing left them. I am ſure this is not Engliſh, but Foreign Policy, advis'd by thoſe who may revere the King, but hate us.

'The Kings of England always reigned beſt when they had the Affections of their Subjects; and of that they were ſecure, when the People were ſenſible, that the King was intirely

intirely in their Intereſt, and loved the Engliſh Soil, as well as the People's Money. When Kings had a landed Intereſt coupled with their Power, then it was moſt ſtable and durable; as is manifeſt by the ancient Demeſne-Lands, and other large and Royal Revenues; the many and great Tenures the People then held their Eſtates under, which created then ſuch an indiſſoluble Union and Dependence, that they ſupported each other; and it is obſervable, that the Separation of the Revenues from the Crown, has been in all Ages the occaſion of rendring the Engliſh Government precarious: And that it might not be ſo, your Petitioners, with a dutiful Deference to his Majeſty, do repreſent to you (the great Council of the Nation) This, Theirs, and the People's Caſe, for Redreſs and Remedy according to your Wiſdoms. Anno 8 W. III. 1696.

'Give me Patience and Pardon, and I will ſet before you the true State of the Fact upon the Petition, the Manner of the Grant, and what is granted.

'The three great Lordſhips, or Hundreds of Denbigh, Bromfield and Yale, in the County of Denbigh, for ſome Centuries, have been the Revenues of the Kings of England and Princes of Wales, to which Lordſhips your Petitioners, and above fifteen hundred Freeholders more are Tenants, pay Rents, Suits of Court, and other Royal Services. Theſe Lordſhips are four Parts in five of the whole County, being the beſt and moſt plentiful Part of the Country, and thirty Miles in extent.

'The preſent Rents to the Crown, are but 1700l. *per Ann.* beſides Heriots, Reliefs, Miſes, Waſts, Eſtreats, Perquiſites of Courts, and other contingent Profits. There are alſo great Waſtes and profitable, of ſeveral thouſands of Acres, rich and valuable Mines, beſides other Advantages, a mighty Favourite and great Courtier might make out of this Country.

'Your Petitioners being caſually informed laſt Summer, that a Grant to the Earl of Portland, of the Lordſhips of Denbigh, Bromfield and Yale, was at the Treaſury, in order to be paſſed, your Petitioners did oppoſe the ſaid Grant; and, upon conſidering the Grant, they found not only the three Lordſhips, but alſo near 3000l. *per Ann.* of your Petitioners and their Countrymens ancient Inheritances expreſly granted. So that, if all that was comprized in the Grant had paſſed, it had been a very noble, nay Royal Gift, worth at leaſt 100,000l. Nor was this Grant made for any ſhort time to this noble Lord, being to him and his Heirs for ever; and yet not much to the Advantage of the Crown, having only a Reſervation of Six Shillings and Eight-pence a Year to the King and his Succeſſors.

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' Theſe Facts were laid before the Lords of the Treaſury, by your Petitioners, who cannot ſay, but they were well heard, well underſtood, and hope, truly repreſented; only with this Remark, that the Docket ſign'd by the Lords of the Treaſury for the Grant, was dated and carried to the Privy-Seal, a Month before the Lords of the Treaſury had ordered your Petitioners to be heard at the Treaſury againſt the Grant. The next Stage we had was to attend that noble Grant from the Treaſury to the Privy Seal, where, I muſt confeſs, our Reaſons and Complaints were heard with all Candour and Goodneſs, by that noble Lord who had the Cuſtody of the Seal; and I believe ſincerely, has truly repreſented the whole Affair: And that is the return, at preſent, that this Grant halts, I ſuppoſe, till the Parliament riſes, and then I doubt not but it will find Legs and take its Journey.

' Having made our Applications in the proper Place, to ſtop the ſaid Grant, and that without Succeſs, it becomes a Grievance, and we hope this Honourable Houſe will redreſs it.

' Theſe Lordſhips, for many Ages, have been the Revenues of the Kings of England, the Support of ſeveral Princes of Wales, have been ſettled upon them and their Heirs, by ſundry Patents of the Kings, and confirmed by ſeveral Acts of Parliament.

' This Royal Dominion, in moſt Reigns, has been attacked by great and powerful Favourites, but with little Succeſs; for, in the fourth of Queen Elizabeth, ſome Parts of this Revenue were granted to ſome of her Creatures, but attended with ſo many Law-Suits and general Diſturbances, that the Queen interpoſed, and the Freeholders gave large Compoſitions for their Peace, and the Queen, by her Charter, confirmed their Eſtates.

' In the fourth Year of King James the firſt, theſe Lordſhips were ſettled upon Prince Charles and his Heirs, Kings of England; but his Servants were (as moſt Courtiers are) willing to make uſe of their Opportunities, and had gotten ſome Grants of great Part of theſe Revenues, and proved ſo vexatious and troubleſome to the Country, that the Freeholders came to another Compoſition, and gave 10,000 l. for their Peace, and for the ſettling of their Eſtates, Tenure and Commons, which were confirmed by Parliament, in the third Year of the Reign of King Charles I.

' In the late Reigns, however calumniated, there were many and great Applications made for Grants of ſome Members and Parts of theſe Lordſhips, which were always rejected, as too powerful a Truſt for a Subject. If the Parts were ſo, what ſhall the Grant of the whole be?

' Hiſtory

' History and Records tell us, that the Grants of these Lordships have been very fatal to either Prince or Patentees; the one either lost his Crown, or the other his Head. It is therefore dangerous meddling with such ominous Bounties. Anno 8 W. III. 1696.

' I must likewise observe to you, that the long Parliament in King Charles the Second's Reign, when they passed an Act for the Fee-Farm Rents, excepted those within the Principality of Wales; which is a plain Intimation, that the Parliament thought them not alienable, or fitting to be aliened, but rather to be preserved for the Support of the Prince of Wales.

' There is a great Duty lies upon the Freeholders of these Lordships, upon the Creation of a Prince of Wales: They pay the Prince 800 l. for Mises, which is such a Duty, Service, or Tenure, that it is not to be sever'd from the Prince of Wales; and how this Tenure can be made reconcilable to this noble Lord's Grant, will be a great difficulty.

' If we are to pay these Mises to this noble Lord, upon this Grant, then he is, or is *quasi* a Prince of Wales; for this Duty was never paid to any other: But if it is to be paid to the Prince of Wales, and likewise to this noble Lord, then we are doubly charged. But if it be to be paid to the Prince of Wales, when he has no Royalty left in that Dominion, and not to be paid to this noble Lord, who by this Grant is to have the whole Lordships, it creates a Repugnancy in the Tenure of our Estates.

' But I suppose this Grant of the Principality is a Forerunner of the Honour too, and then I shall fancy we are returning to our Original Contract; for, as Story tells us, we were first brought to entertain a Prince of Wales, by recommending him to us as one that did not understand the English Tongue, and our Forefathers thence inferred, that he must be our Countryman, and no Foreigner, and one that understood the British Language; how we were deceived therein, is palpable.

' I suppose this Lord doth not understand our Language, nor is it to be suppos'd, that he will come amongst us to learn it, nor shall we be fond of learning his.

' But since I have minded you of our Welsh Original Contract, which is of so long a standing, I would not have you forget another Contract made not above seven or eight Years since, which is the Foundation of our present Government; I mean the Bill of Rights and Liberties, and settling the Succession of the Crown, which is so much forgotten in Discourse or Practice, that I have not heard it named in Parliament, but once the last Parliament: And I find it as much forgotten in the Administration. I would

gladly

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gladly know from those who are better vers'd in prerogative Learning than my self, Whether his Majesty can by the Bill of Rights, without the Consent of Parliament, aliene or give away the Inheritance, or an absolute Fee of the Crown Lands? If he can, I would likewise know to what purpose the Crown was settled for Life, with a Remainder in Succession, if a Tenant for Life of the Crown can grant away the Revenue of the Crown, and which is incident to the Crown? Or can the King have a larger Estate in the Revenue than he has in the Crown to which it belongs? Far be it from me to speak any thing in derogation of his Majesty's Honour and Care of us!

'It cannot be pretended, that he shall know our Laws, (who is a Stranger to us and we to him) no more than we know his Counsellors, which I wish we did; I mean, those new Advisers. However, those of his Counsellors or Ministers, whom we do know, and those thro' whose hands the Grant did pass, by advising the King to grant what by Law he could not, are guilty of the highest Violation of the Laws and Liberties of England, strike at the Foundation of the Succession, and tear up the Bill of Rights and Liberties by the roots: It was their Province and Duty to have acquainted the King with his Power and Interest, that the ancient Revenue of the Crown is sacred and unalienable in time of War and the People's Necessities.

'By the old Law, it was part of the Coronation-Oath of the Kings of England, not to aliene the ancient Patrimony of the Crown, without the Consent of Parliament: But as to those Oaths of Office, most Kings have Court-Casuists about them, to inform that they have Prerogative enough to dispense with them.

'It has been the peculiar Care of Parliaments, in all Ages, to keep an even Balance betwixt King and People; and therefore, when the Crown was too liberal in their Bounties, the Parliament usually resum'd those Grants, which was very frequent; for, from the Reign of Henry the Third of England, to the Sixth Year of Henry the Eighth, there was one or more Bills of Resumption in every one of those Kings Reigns, save one of them. In the time of Henry the Fifth, there was an Act of Resumption of all that was granted from the Prince of Wales in all that Principality; and yet those Acts were not look'd upon by those Kings (of whom some of them both good and great) any Lessening or Diminution to their Prerogatives, it being consider'd, that Kings have their Failings as well as other Men, being cloathed with frail Nature, and are apt to yield to the Importunities of their Flatterers and Favourites: Therefore it becomes necessary, that the great Council of the Nation should interpose for the Interest of the King and People.

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'The Commons of England always entertained an honourable Jealousy of their Princes, when they perceived their Expences at Home or Abroad, their Gifts and Boons to their Favourites to be too large and exorbitant; and have therefore, by their Petitions and dutiful Applications to the Crown, advis'd the Kings of England to retrench their Expences, and not to aliene or give away the Revenues of the Crown, lest they should become burthensome to the People, and chargeable to the Commonwealth, and that they would live upon their own Revenue, & *Tallagiis Populi*. These were their just and frequent Ways, in elder Time, to repair the languishing Estate of the Crown. Anno 8 W. III. 1696.

'And as we are an Island, and subject to Invasion, so the Parliaments of England were very watchful, that other Countries should not outdo them in Trade and naval Strength; that Foreigners should have no more Footing, or Strength, or Settlement in England, than was conducing to carry on the Trade and Commerce of the Nation; and whenever Princes entertain'd Foreigners as their Counsellors, or chief Advisers, the People of England were restless and uneasy, till they were removed out of the King's Councils, nay, out of the Kingdom. And Instances are many in History and Parliament-Rolls, of what Great Men and Foreigners (being Favourites) were banish'd the Land for procuring to themselves too large a Proportion of the Royal Revenue, especially in Time of War, and the People's Necessities.

'As for Instance, in King Stephen's Time, who usurped the Crown of England from Maud the Empress, and her Son, King Henry the Second; William de Ipres, a Netherlander, was brought over, with great Numbers of his Countrymen; to which William de Ipres that King *de facto* gave an Earldom, and made him so great a Confident, that he was in all his Councils, and obtain'd great Grants, not only for himself, but also for his Countrymen the Netherlanders, called then Flemings, who then swarmed so thick about that King's Court, that Englishmen were scarce known or regarded; at which the People were so enraged, that they importuned King Henry the Second, when he obtain'd the Right of his Crown, to seize on all which King Stephen had given the foreign Favourite and his Accomplices, and banished him, and his Friends the Netherlanders, from his Court and Kingdom.

'The like Compliment was made by the People to King Richard the First, for the removing and banishing of the Duke of Saxony, his own Nephew, and his Sister's Son, being a Foreigner, and all his German Friends.

'The same Address was made by the People to Henry the

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the Third, to baniſh his Half-Brethren (being Foreigners) and all their Poictovian Friends.

'The ſame Addreſs was made by the People to Edward the Second, to do ſo with the Lineage of Gaveſton and all his Gaſcoigners; and did not Edward the Third do the ſame with his Bohemian Friends?

'Henry the Fourth, and other following Princes took the ſame Method, upon the humble and hearty Petition of the People, ſometimes in Parliament, and ſometimes out; and, in theſe Caſes, the Kings ſeized and took to themſelves all the Revenues of the Crown that they had given them, and always ſent thoſe Foreigners to their own Countries.

'For theſe Reaſons given, in many of thoſe Inſtances, the People of England diſliked and oppoſed them, fearing both their Power and Councils, and that they would become heavy and burthenſome to the State, and that England was able to foſter none but her own Children.

'I muſt needs confeſs, that my thoughts are ſtrangely troubled with the Apprehenſion of our deplorable State. We are in a Confederacy in War, and ſome of thoſe Confederates our Enemies in Trade, tho' planted amongſt us, ſome in the King's Council, ſome in the Army, and the common Traders have poſſeſs'd themſelves of the Out-skirts of the City. We find ſome or other of them Naturaliz'd, and others made Denizens. Every Parliament, we find, endeavours for a general Naturalization, and that warmly ſollicited from Court. We ſee our good Coin all gone, and our Confederates openly coining baſe Money, of Dutch Alloy, for us. We ſee moſt Places of Power and Profit given to Foreigners: We ſee our Confederates in conjunction with the Scots to ruin our Engliſh Trade: We ſee the Revenues of the Crown daily given to one or other, who make Sale of them, and tranſmit their Eſtates elſewhere: We do not find any of them buy Lands or Eſtates amongſt us; but what they can get from us they ſecure in their own Country.

'How can we hope for happy Days in England, when this great Man, and the other (tho' naturalized) are in the Engliſh, and alſo in the Dutch Councils? If thoſe Strangers, tho' now Confederates, ſhould be of different Intereſts, as moſt plainly they are in point of Trade; to which Intereſt is it to be ſuppoſed thoſe great foreign Counſellors and Favourites would adhere? So that, I foreſee, when we are reduc'd to extreme Poverty, as now we are very near it, we are to be ſupplanted by our Neighbours, and become a Colony to the Dutch.

'I ſhall make no Remarks on this great Man, for his Greatneſs makes us little, and will make the Crown both Poor and Precarious; and when God ſhall pleaſe to ſend us

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'I would have us to conſider, we are Engliſhmen, and muſt, like good Patriots, ſtand by our Country, and not ſuffer it to become tributary to Strangers: We have rejoic'd, that we have beat out of this Kingdom Popery and Slavery, and now do, with as great Joy, entertain Socinianiſm and Poverty; and yet we ſee our Properties daily given away, and our Liberties muſt ſoon follow.

'Thus I have repreſented unto you the Nature of this mighty Grant to this noble Lord, the ill Conſequence that muſt attend the Public, and more particularly this County, by the paſſing of it: the Remedies that our Forefathers took to cure this miſchievous Ill, were known.

'I deſire more Redreſs than Puniſhment. Therefore I ſhall neither move for an Impeachment againſt this noble Lord, nor the Baniſhment of him; but I ſhall beg that he may have no Power over us, nor we any Dependance upon him: Therefore I ſhall conclude my Motion, that an Addreſs be made to His Majeſty, to ſtop the Grant that is paſſing to the Earl of Portland, of the Lordſhips of Denbigh, Bromfield, and Yale, and other Lands in the Principality of Wales; and that the ſame be not granted, but by Conſent of Parliament.'

This ſtout and eloquent Speech made ſo great an Impreſſion, that Mr. Price's Motion was carried by an unanimous Conſent, and on January the 22d this Addreſs was preſented to the King by the Speaker, attended by the whole Houſe.

Addreſs thereon.

'May it pleaſe your moſt Excellent Majeſty, We your Majeſty's moſt dutiful and loyal Subjects, the Knights, Citizens and Burgeſſes in Parliament aſſembled, humbly lay before your Majeſty, That whereas there is a Grant paſſing to William Earl of Portland and his Heirs, of the Manors of Denbigh, Bromfield, and Yale, and divers other Lands in the Principality of Wales, together with ſeveral Eſtates of Inheritance, enjoyed by many of your Majeſty's Subjects, by virtue of ancient Grants from the Crown:

'That the ſaid Manors, with the large and extenſive Regalities, Powers and Juriſdictions to the ſame belonging, are of great concern to your Majeſty and the Crown of this Realm: And that the ſame have been uſually annex'd to the Principality of Wales, and ſettled on the Princes of Wales for their Support: And that a great Number of your Majeſty's Subjects in thoſe Parts hold their Eſtates by royal

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Tenure, under great and valuable Compoſitions, Rents, royal Payments, and Services to the Crown and Princes of Wales, and have by ſuch Tenure great dependance on your Majeſty and the Crown of England, and have enjoyed great Privileges and Advantages with their Eſtates under ſuch Tenure.

'We therefore moſt humbly beſeech your Majeſty to put a ſtop to the paſſing this Grant to the Earl of Portland of the ſaid Manors and Lands; and that the ſame may not be diſpoſed from the Crown but by Conſent of Parliament. For that ſuch Grant is in diminution of the Honour and Intereſt of the Crown, by placing in a Subject ſuch large and extenſive Royalties, Powers and Juriſdictions, which ought only to be in the Crown, and will ſever that Dependance, which ſo great a Number of your Majeſty's Subjects in thoſe parts have on your Majeſty and the Crown, by reaſon of their Tenure, and may be to their great Oppreſſion in thoſe Rights which they have purchaſed and hitherto enjoyed with their Eſtates, and alſo an Occaſion of great vexation to many of your Majeſty's Subjects, who have long had the abſolute Inheritance of ſeveral Lands (comprehended in the ſaid Grant to the Earl of Portland) by ancient Grants from the Crown.'

His Majeſty in Anſwer was pleaſed thus to expreſs himſelf.

King's Anſwer.

'Gentlemen, I have a kindneſs for my Lord Portland, 'which he has deſerved of me by long and faithful Services; 'but I ſhould not have given him theſe Lands, if I had 'imagined the Houſe of Commons could have been concerned; 'I will therefore * recall the Grant, and find ſome other 'way of ſhewing my Favour to him.'

Proceedings occaſion'd by the Scots India Company.

The Committee of Commons having made their Report to the Houſe, and deliver'd a Copy of the Oath *de Fideli*, taken by the Directors of the Scots India Company, and of the Journal of their Proceedings, which, together with the Petition

* *Which accordingly was done; and the May after the following Grant was made in Recompence for the Revenues of the Principality of Wales.*

A Grant to William, Earl of Portland, of the Manor of Grantham in the County of Lincoln, Honour of Penreth in the County of Cumberland, Manor of Dracklow and Rudneth in the County of Cheſter, Manor of Terrington in the County of Norfolk, Manors of Partington, Briſtol-Garth, Homſey, Thwing, Burniſley, and Leven in the County of York, all Parcel of the ancient Revenue of the Crown of England, and of the Manor of Pavenſey in the County of Suſſex, Parcel of the Duchy of Lancaſter, and of all the Lands, Tenements, and Hereditaments thereunto belonging, to have and to hold the ſame to the ſaid Earl and his Heirs; as of his Majeſty's Manor of Eaſt-Greenwich in the County of Kent, under the Rent of 4 l. 13 s. 4 d. payable at Lady-Day Yearly. And ſuch Clauſes, Powers and Proviſo's are inſerted, as were directed by Warrant under his Majeſty's royal Sign Manual. There is likewiſe granted to the ſaid Earl of Portland, all the little Remainder of the Fee-Farm-Rents, worth to be ſold, 24,000 l. Given of mere Bounty, 23,000 l. Which laſt Grant was afterwards vacated by the ſaid Earl.

Petition of the English East-India Company, having been maturely examin'd and consider'd; they resolv'd, January 26th, 'That the Directors of the Company of Scotland, trading to Africa and the Indies, administring and taking here in this Kingdom an Oath *de Fideli*; and under colour of a Scotch Act of Parliament, stiling themselves a Company, and acting as such, and raising Money in this Kingdom for carrying on the said Company, were Guilty of a High Crime and Misdemeanour; and that the

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Lord Belhaven.	Thomas Coutts.
William Paterson.	Daniel Van Mildert.
David Nairne.	Robert Williamson.
James Smith.	Anthony Merry.
James Chiesly.	Paul Docminique.
William Shepherd.	Robert Douglas.
Robert Blackwood.	Thomas Skinner.
James Balfour.	James Bateman.
James Fowlis.	Walter Stewart, and
Hugh Frazier.	Joseph Cohen d'Azavedo,
Abraham Wilmer.	

be impeach'd of the said High Crimes and Misdemeanours,' upon the Evidence of Roderick Mackenzie; who while the Impeachment was preparing, prevaricated in it, and was order'd into Custody: but he made his Escape, and cou'd not be apprehended, notwithstanding the King, at the Request of the Commons, issu'd a Proclamation for that purpose.

Several Persons impeach'd thereon.

Soon after this the Commons took into Consideration the Trade of this Kingdom, and resolv'd to erect a Council, for the better regulating and improving it with sufficient Powers; but it being debated whether the Members of that Council, which were to be named by the House, but not of Members, shou'd take an Oath acknowledging King William to be rightful and lawful King of England, and renouncing the Title of the late King James; it was rejected.

A Council of Trade propos'd.

On February the 24th, the King came to the House of Peers, and made the following Speech to both Houses.

'My Lords and Gentlemen,

'I AM come hither this Day upon an extraordinary Occasion, which might have proved fatal, if it had not been disappointed by the singular Mercy and Goodness of God; and may now, by the Continuance of the same Providence, and our own prudent Endeavours, be so improved, as to become a sufficient warning to us, to provide for our Security against the pernicious Practices and Attempts of our Enemies.

King's Speech on discovery of the Assassination-Plot.

'I have received several concurring Informations of a Design to assassinate me; and that our Enemies at the same

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'time are very forward, in their Preparations for a ſudden Invaſion of this Kingdom; and have therefore thought it 'neceſſary, to loſe no time in acquainting my Parliament 'with thoſe things, in which the Safety of the Kingdom, 'and the Public Welfare are ſo nearly concerned, that I 'aſſure myſelf nothing will be omitted on your part, which 'may be thought proper for our future Security.

'I have not been wanting to give the neceſſary Orders 'for the Fleet, and I hope we have ſuch a Strength of Ships, 'and in ſuch readineſs, as will be ſufficient to diſappoint the 'Intentions of our Enemies.

'I have alſo diſpatched Orders, for bringing home ſuch 'a Number of our Troops, as may ſecure us from any 'Attempt.

'Some of the Conſpirators againſt my Perſon are already 'in Cuſtody, and care is taken to apprehend ſo many of the 'reſt as are diſcovered; and ſuch other Orders are given, as 'the preſent Exigency of Affairs does abſolutely require at 'this time for the Public Safety.

'My Lords and Gentlemen,

'Having now acquainted you with the danger which hath 'threatned us, I cannot doubt of your Readineſs and Zeal, to 'do every thing which you ſhall judge proper for our common Safety: And I perſuade myſelf, we muſt be all ſenſible 'how neceſſary it is in our preſent Circumſtances, that all 'poſſible diſpatch ſhould be given to the Buſineſs before you.'

Upon this, the two Houſes immediately agreed to wait on the King that very Evening at Kenſington with their humble Addreſs.

Addreſs of both Houſes.

'We your Majeſty's moſt loyal and dutiful Subjects, the Lords Spiritual and Temporal, and Commons, having taken into our ſerious Conſideration what your Majeſty hath been pleaſed to communicate to us this Day, think it our Duty in the firſt place, to give your Majeſty moſt humble Thanks for having acquainted your Parliament with the great danger your ſacred Perſon hath been ſo nearly expoſed to, and the Deſign of an Invaſion from our Enemies abroad: We heartily congratulate your Majeſty's happy Preſervation, and thankfully acknowledge the ſignal Providence of God in it; and at the ſame time declare our deteſtation and abhorrence of ſo villainous and barbarous a Deſign: And ſince the Safety and Welfare of your Majeſty's Dominions do ſo entirely depend upon your Life, we moſt humbly beſeech your Majeſty to take more than ordinary care of your royal Perſon. And we take this Occaſion to aſſure your Majeſty of our utmoſt aſſiſtance to defend your Perſon, and ſupport your Government, againſt the late King James, and all other your Enemies both at home and abroad; hereby

hereby declaring to all the World, that in case your Majesty shall come to any violent Death, (which God forbid) we will revenge the same upon all your Enemies, and their Adherents: And as an Instance of our Zeal for your Majesty's Service, we will give all possible dispatch to the Public Business: And we make it our desire to your Majesty, to seize and secure all Persons, Horses and Arms, that your Majesty may think fit to apprehend upon this Occasion.' Anno 8 W. III. 1696.

His Majesty gave the two Houses this agreeable Answer:

'My Lords and Gentlemen, I thank you heartily for this 'Address; on my part you may be assured, that I will do 'all that is within my power, for the Conservation of this 'Kingdom, to which I have so many Obligations. I will 'readily adventure my Life for the Preservation of it, and 'recommend myself to the Continuance of your Loyalty and 'good Affections.' King's Answer.

The House of Commons dropt the Sense of all former Animosities, and generously fell into the immediate Measures of Respect and Loyalty to the King; giving a new Proof of this Observation, That Plots when discovered strengthen the Government they were designed to ruin. On the same day with the Speech and Address, they *Ordered*, That leave be given to bring in a Bill to empower his Majesty to secure and detain such Persons, as his Majesty shall suspect are conspiring against his Person or Government. They gave several Instructions for the more effectual raising the Militia. They *Resolved*, That leave be given to bring in a Bill, that whenever it shall please God to afflict these Realms by the Death of his present Majesty, the Parliament then in being, shall not be dissolved thereby, but shall continue until the next Heir to the Crown in Succession, according to the late Act of Settlement, shall dissolve the same. And that an humble Address be presented to his Majesty, that he will please to issue his royal Proclamation, to banish all Papists from the Cities of London and Westminster, and ten Miles from the same: And give Instructions to the Judges going the Circuits, to put the Laws in execution against Papists and Nonjurors. And as the greatest Test of Loyalty, they drew up this Form of Association, to be subscribed by all the Members. Several Resolutions occasioned by the Plot.

'Whereas there has been a horrid and detestable Conspiracy formed and carried on by Papists, and other wicked and traitorous Persons, for assassinating his Majesty's royal Person, in order to encourage an Invasion from France, to subvert our Religion, Laws and Liberty; we whose Names are hereunto subscribed, do heartily, sincerely and solemnly profess, testify and declare, that his present Majesty Form of Association.

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jeſty King William is rightful and lawful King of theſe Realms: And we do mutually promiſe, to engage to ſtand by and aſſiſt each other to the utmoſt of our Power, in the ſupport and defence of his Majeſty's moſt ſacred Perſon and Government, againſt the late King James and all his Adherents. And in caſe his Majeſty come to any violent or untimely Death (which God forbid) we do hereby further, freely and unanimouſly, oblige ourſelves, to unite, aſſociate, and ſtand by each other, in revenging the ſame upon his Enemies, and their Adherents; and in ſupporting and defending the Succeſſion of the Crown, according to an Act made in the firſt Year of the Reign of King William and Queen Mary, entitled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown.*'

Signed by all the Members.

This Aſſociation was on the three following Days ſigned by all the Members that came to the Houſe; and becauſe ſome others had abſented themſelves upon Pretence of Health or Buſineſs, but in Reality to avoid ſetting their Hands to an Acknowledgment of King William being rightful and lawful King; it was therefore ordered on Feb. 27. 'That ſuch Members of the Houſe who had not already ſigned the Aſſociation, ſhould do it by Monday Fortnight, or declare their Refuſal, notwithſtanding their Leave to be abſent.'

On the appointed Day, March 16th, the Names of ſuch Members were called over, as were abſent upon the laſt Call of the Houſe; and ſeveral of them being ſtill abſent, in the Country, or ill in Town, ſignifying their Intentions to ſign the Aſſociation, were excuſed their Attendance: And the Speaker was ordered to write to ſuch Members as are in the Country, and have not ſigned the Aſſociation, or declared their Refuſal ſo to do, to know what they will do, and to return their Anſwer by the firſt Opportunity. And at the ſame time the Clerk of the Houſe was to attend ſuch Members as were ill in town, with the ſaid Aſſociation, in order to their ſigning the ſame, or receiving their Anſwer of Refuſal. The abſent Members ſeeing themſelves ſo preſſed, and the Nation at this Time in ſo great a Ferment againſt the Diſaffected, thought it Prudence to yield to the Times, and either to ſubſcribe the Aſſociation, or to promiſe to do it on their firſt coming up to Town, though it was againſt the Inclination of ſome, and perhaps againſt the Principles of others.

500,000 l. for the Civil-Liſt, and 15,000 l. a Year ſettled on the French Proteſtants.

The Houſe of Commons taking into Conſideration that Part of his Majeſty's Speech, at the Opening of this Parliament, which related to the Civil-Liſt, and to the diſtreſs'd Proteſtants driven from their Country, by the Perſecution in France under Lewis XIV. it was *Reſolv'd* March 17, that a Fund be ſettled for raiſing 500,000 Pounds for the Civil-

Civil-List, and 15,000 Pounds a Year for the French Protestants. Anno 8 W. III. 1696.

On April the 2d, upon a Report of the Examination and Confeſſion of Sir William Perkins and Sir John Friend, it was *Reſolved*, that a Bill be brought in *for the better Security of his Majeſty's Perſon and Government*: and that, the Heads of the Bill ſhould be, A Bill for Security of his Majeſty's Perſon.

1. That ſuch as ſhall refuſe to take the Oaths to his Majeſty, ſhall be ſubject to the Forfeitures and Penalties of Popiſh Recuſants Convict.

2. To inflict a Penalty on ſuch as ſhall by Writing, or otherwiſe, declare, that King William is not lawful and rightful King of theſe Realms; Or that the late King James, or the pretended Prince of Wales, or any other Perſon, than according to the Act of Settlement of the Crown, hath any Right to the Crown of theſe Realms.

3. To ratify and confirm the Aſſociation entered into by all his Majeſty's good Subjects, for the Preſervation of his Majeſty's Perſon and Government.

4. That no Perſon ſhall be capable of any Office of Profit or Truſt, Civil or Military, that ſhall not ſign the ſaid Aſſociation.

5. That the ſame Penalties be inflicted on ſuch as come out of France, as upon thoſe that go thither.

The Houſe of Commons, on Friday April the third, preſented to his Majeſty in a Body, the Aſſociation, with their Subſcriptions to it, and at the ſame time requeſted his Majeſty, that he would be pleaſed to order, that the ſaid Aſſociation, and all other Aſſociations by the Commons of England, might be lodged among the Records of the Tower. Upon which Occaſion his Majeſty was pleaſed to ſay, Aſſociation preſented to his Majeſty.

'Gentlemen,

'I Take this as a moſt convincing and moſt acceptable 'Evidence of your Affection: And as you have freely 'aſſociated yourſelves for our common Safety, I do heartily 'enter into the ſame Aſſociation, and will be always ready 'with you and the reſt of my good Subjects, to venture my 'Life, againſt all who ſhall endeavour to ſubvert the Re'ligion, Laws, and Liberties of England. And I will take 'care, that this and all other Aſſociations preſented to me 'be lodged among the Records of the Tower.' The King's Speech on that Occaſion.

Upon Report of this gracious Acceptance, the next day the Houſe *Reſolved*, 'That whoever ſhall by Word or Writing affirm, that the Aſſociation entered into by any Member of this Houſe, or any other Perſon, is illegal, ſuch Perſon ſhall be deemed a Promoter of the Deſigns of the late King James,

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James, and an Enemy to the Laws and Liberties of this Kingdom.'

Soon after, the House of Lords agreed in the same Association, and presented it to the King; and the Example of both Houses of Parliament was followed by all the Corporations of the three Kingdoms.

Bill for regulating Elections, rejected.

The Act to *regulate Elections of Members to serve in Parliament*, pass'd both Houses, but had not the Royal Assent, when his Majesty gave it to several other Bills, most of them private ones, April 10. Upon this the House of Commons shew'd some Resentment against those that advised the King not to pass that Bill. The Question was put April 24, That whosoever advised his Majesty not to give his Royal Assent to the Bill *for further regulating Elections for Members to serve in Parliament*, which past both Houses, is an Enemy to the King and Kingdom. But the Majority finding by the Warmth with which the Party above-mention'd espous'd the Affirmative, that it was intended to make a Difference between the King and Parliament, did not only put a Negative upon the Question by near 150 Voices, Noes 212, Yeas 70; but it was order'd, that the Speaker do with the Votes print the Question, together with the Numbers of the Affirmative, and Negative. It must be farther observ'd the Supply given to the Crown this * Session, amounted to 5,024,853 l.

The 27th, The King gave the Royal Assent to *An Act for the better Security of his Majesty's Person and Government*, and other Bills, and clos'd this Session with the following Speech to both Houses.

King's Speech.

'My Lords and Gentlemen,

'YOU have shewn so great Concern for my Person, and Zeal for my Government, and have done so much for the Preservation of the one, and for the strengthening of the other, by the good Laws which have been made, and by the Supplies you have provided for the several Occasions of this Year, that the late Designs of our Enemies are, by the Blessing of God, like to have no other Effect, than

* *The Bill for establishing a Land-Bank, likewise pass'd this Session, which Mr. Oldmixon calls a Chimæra of Dr. Chamberlain's Invention, under the Patronage of Mr. Robert Harley. He adds, The Project was to raise 2,564,000 Pounds upon the Security of a Land-Company, who were to lend Money upon nothing but Land-Security, or to the Government. The Bank petitioned against it, but that did not hinder its passing; and the great House in Queen-Street, late the Lord Conway's, was taken for the Office, where proper Officers attended, to carry on so notable a Work; which, like the Bubble of the Brook, swell'd with the Wind, and burst again with it in an Instant; to the great Mortification of the said Mr. Robert Harley, who had been at no small pains to carry it so far as into an Act of Parliament.*

than to let them see how strictly we are united; and to give me this Occasion to acknowledge your Kindness, and to assure you of all the Returns which a Prince can make to his People. Anno 8 W. III. 1696.

'My Lords and Gentlemen,

'The Necessity of Affairs require my Absence out of the Kingdom for some time; I do earnestly recommend to you, that in your several Stations, you will be assisting those whom I shall leave to administer the Government; and that you will be careful in preserving the Public Peace of the Kingdom.'

Then the Lord-Keeper, by his Majesty's Command, prorogued the Parliament till Tuesday the 16th of June. Parliament prorogued.

To have done with this Session, we must mention some Bills which were brought in, but did not pass the House; as 1. The Bill *for regulating Printing and Printing-Presses.* 2. *A Bill for reversing a Judgment against Sir William Williams in 2 Jac. II. for what he did as Speaker of the House of Commons.* 3. *A Bill for settling and regulating the East-India Trade.* 4. Another *to regulate the Trade to Africa.* 5. *A Bill to confirm the Earl of Torrington's Grant.* 6, 7. *Two Bills to vest in the Crown all forfeited Estates in England and Ireland, and to vacate all Grants made thereof.* 8. *A Bill to prevent Stock-jobbing.* 9. *A Bill for preventing Papists from Disinheriting their Protestant Heirs.* Bills dropped.

On Tuesday, October 20, the Parliament met at Westminster, and the King being seated on the Throne, with the usual Solemnity, made this Speech to both Houses. Second Session of the Third Parliament.

'My Lords, and Gentlemen,

'I Have called you together as soon as was possible, and I think it a great Happiness that this Year has passed without any Disadvantage abroad, or Disorder at home, considering our great Disappointment in the Funds given at your last Meeting, and the Difficulties which have arisen upon the Re-coining of the Money. King's Speech.

'This is so convincing a Proof of the good Disposition of my Army, and of the steady Affections of my People, that I cannot but take notice of it with great Satisfaction.

'Our Enemies have not been without hopes that such a Conjuncture might have proved fatal to us: But as they have failed in those Expectations, so I am fully persuaded that your unanimous Proceedings, in this Session, will make them for ever despair of an Advantage from any Disagreement among ourselves.

'It must be confessed, that the Business which you have before you will be very great, because of the Neces sity of

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'ſupplying former Deficiencies, as well as making Proviſion for the next Year's Service.

'And upon this Occaſion it is fit for me to acquaint you, 'that ſome Overtures have been made in order to the entering upon a Negotiation for a general Peace: But I am 'ſure we ſhall agree in Opinion, that the only way of 'treating with France, is with our Swords in our Hands: 'and that we can have no reaſon to expect a ſafe and honourable Peace, but by ſhewing ourſelves prepared to make 'a vigorous and effectual War: In order to which, I do 'very earneſtly recommend to you, Gentlemen of the Houſe 'of Commons, that you would conſider of raiſing the neceſſary Supplies, as well for maintaining the Honour of 'Parliaments in making good the Funds already granted, 'as for carrying on the War the next Year; which I think 'ought not to be leſs than what was intended to be raiſed 'for that Purpoſe the laſt Seſſion.

'I muſt alſo put you in mind of the Civil-Liſt, which 'cannot be ſupported without your Help; and the miſerable 'Condition of the French Proteſtants does oblige me to mention them to you again,

'My Lords and Gentlemen,

'It may deſerve your Conſideration, whether there do 'not ſtill remain ſome Inconveniencies relating to the Coin, 'which ought to be remedied: And I hope you will find 'out the beſt Expedients for the Recovery of Credit, which 'is abſolutely neceſſary, not only with reſpect to the War, 'but for carrying on of Trade.

'I am of Opinion, that there is not one good Engliſhman 'who is not entirely convinced, how much does depend 'upon this Seſſion; and therefore I cannot but hope for 'your Unanimity and Diſpatch in your Reſolutions, which 'at this time are more neceſſary than ever, for the Safety 'and Honour of England.'

Proceedings of the Commons.

The Commons having appointed their grand Committees, for Religion, for Grievances, for Trade, for Courts of Juſtice, and for Privileges and Elections, *reſolved*, *nemine contradicente*, That they would ſupport his Majeſty and his Government againſt all his Enemies both at home and abroad, and that they would effectually aſſiſt him in the proſecution and carrying on the War againſt France: And that an humble Addreſs ſhould be prepared to be preſented to his Majeſty purſuant to the ſaid Reſolution. Which Addreſs was drawn up by Mr. Montague, Chancellor of the Exchequer, and preſented to his Majeſty on October the 23d, by the whole Houſe, in theſe Words:

'May

'May it please your most excellent Majesty, This is the eighth Year in which your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, have assisted your Majesty with large Supplies for carrying on a just and necessary War, in Defence of our Religion, Preservation of our Laws, and Vindication of the Rights and Liberties of the People of England; which we have hitherto preserved; and, by the Blessing of God, upon your Majesty's Conduct and good Government, will stedfastly maintain and entail on our Posterity. Anno 8 W. III. 1696. Their Address.]

'This has cost the Nation much Blood and Treasure, but the Hopes of accomplishing so great and glorious a Work, have made your Subjects chearfully support the Charge. And to show to your Majesty, and to all Christendom, that the Commons of England will not be amused, or diverted from their firm Resolutions of obtaining by War a safe and honourable Peace, we do, in the Name of all those we represent, renew our Assurances to your Majesty, that this House will support your Majesty, and your Government, against all your Enemies both at home and abroad: and that they will effectually assist you in the Prosecution and carrying on the present War against France.'

His Majesty in answer was pleased to express himself thus:

'Gentlemen, The Continuance of your Zeal and Affection is the Thing of the world I value most, and I will answer it by all the Ways I can think of; and I will make your Good, and the Safety of the Nation, the principal Care of my Life.' His Majesty's Answer.

These Assurances of Affection on the one side, of Loyalty on the other, and of mutual Confidence on both, being happily given, the Commons entered with great Alacrity upon the three great Affairs that had been recommended to them from the Throne, to wit, *The further remedying the ill State of the Coin: The providing a Supply for the next Year's Service: And the Restoring of public Credit.* All which had a near Dependance the one upon the other, and made the Difficulties more intricate and hard to compose.

In order to remove the first and the last, the Commons resolved on their very first Day of Meeting, *That they would not alter the Standard of the Gold and Silver, in Fineness, Weight or Denomination; and that they will make good all Parliamentary Funds since his Majesty's Accession to the Crown, that have been made Credits for Loan from the Subject.* And because the Circulation of Guineas was obstructed by reason of the Want of other Coin, and by reason of the Act made the last Session, to take off the Obligation of Coining Gold, a Bill was Vote on the State of the Coin.

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Eſtimates of the Charge of the Navy, and Army.

Ordered to be brought in October the 22d, *For the giving Leave to import Guineas, and to coin Gold at the Mint.*

The 28th, the Commiſſioners of the Admiralty preſented to the Houſe, an Eſtimate of the Charge of the Navy for the Year 1697; which for 40,000 Sea-men, Wear, Tear, Ordnance, the Officers of two Regiments of Marines, the Regiſtry-Office, and the Ordinary of the Navy, was computed at 2,523,954 l.

The ſame Day, likewiſe, the Earl of Ranelagh preſented a Liſt of the Land-Forces, and the Sums neceſſary for their Support: An Abſtract of which, as follows:

Total of Horſe,

Troops and Com. Officers.	Non-Com. Offic.	Private-Men.	Together.	Pay, *per Ann.*	Servants allow'd.
162	955	902	9996	11,855 l. 608,637 16 s. 1 d.	811

Total of Dragoons,

82	387	738	5120	6254 l. 217,205 8 s. 4 d.	686

Total of Foot,

875	3200	7589	58,553	69,342 l. 1,182,038 15 s. 6 d.	

Total Charge, l. 2,007,881 19 s. 11 d.

Over and above which, Wanting

For General-Officers	l. 31,058 8 s. 6 d.
For the Train	l. 210,773 4 s. 5 d.
For Tranſports, Hoſpitals, and Contingencies	l. 460,000 0 0
In all	l. 2,709,713 12 s. 10 d.

The ſame day Complaint having been made of a printed Pamphlet, entitled, *An Account of the Proceedings in the Houſe of Commons, in relation to the re-coining the clipt Money, and falling the Price of Guineas*; They voted it to be falſe, ſcandalous and ſeditious, and deſtructive of the Freedom and Liberties of Parliament: And ordered the ſaid Pamphlet to be burned by the common Hangman, and addreſſed his Majeſty to iſſue his Proclamation, promiſing a Reward of 500 l. for the Diſcovery of the Author of that Libel. And two Days after, the Houſe being inform'd of a printed Paper, entitled, *A ſummary Account of the Proceedings upon the happy Diſcovery of the Jacobite Conſpiracy*; they reſolved, that the printing the Names of the Members of their Houſe, and reflecting on them for their Proceedings in Parliament, was a Breach of the Privileges of that Houſe, and deſtructive of the Freedom and Liberties of Parliament.

Pamphlets cenſur'd.

November 3, Mr. Harley from the Commiſſioners for ſtating the public Accounts preſented an Account of the Deficiencies of the ſeveral Funds, according to Order, *viz.*

Deficiencies in the Funds.

	l.	s.	d.
On the double 9d *per* Barrel Exciſe	103000	0	0
Additional Imports	43000	0	0
Firſt 4s. Aid	59000	0	0
Second Quarterly Poll	80000	0	0
On the Act to enlarge Time for the purchaſing Annuities, beſide the growing Intereſt	366000	0	0

On the Duty of Paper and Parchment, granted for 4 Years as a Fund for 330,000 l. at 8 *per Cent.* Expected by what it has already produc'd to be conſiderably deficient at the end of that Term.

The Loans on the 3d 4s. Aid are ſuppos'd to be very near ſatisfy'd by that Fund; but the Certainty not yet known.

The Duties for 3 Years on Coffee, Tea, Chocolate and Spices, have not amounted to above one fourth of what they were deſigned for.

Births, Burials, and Marriages, with a borrowing Clauſe for 650,000 l. at 8 *per Cent.* have hitherto, except very lately, produc'd but 2000 l.

The Fund of Salt, Glaſs, and Tobacco-Pipes, not having rais'd the 2,564,000 l. principal Money deſign'd, remains to be diſpos'd of by Parliament.

The Account of Duties upon Houſes granted for 7 Years not yet come in.

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What the laſt 4s. Aid will fall ſhort, cannot as yet be judg'd.

Nor the Deficiency of every other Fund on account of the Re-coinage.

To this was added an Account of the clipp'd and new Money delivered out and paid in at the ſeveral public Offices: The Total of which was as follows:

Clipp'd Money deliver'd out.	New Money paid in
4,721,600 l. 14 s. 9½ d.	1,815,527 l. 19 s. 3½ d.

Order'd, That the Commiſſioners of the Treaſury do account to this Houſe, how the 2,564,000 l. to be rais'd by the Duties on Salt, Glaſs and Tobacco-Pipes came to fail.

And a Motion being made, That the Returns made by the Commiſſioners for ſtating the public Accounts, be referred to the Committee of the whole Houſe; it paſs'd in the Negative, Yeas 54, Noes 271.

Supplies voted for the Land and Sea-Service.

The 4th, the Houſe having conſidered the State of the War for the Year 1697, both in relation to the Navy and Land-Forces, which at their deſire, his Majeſty ordered to be laid before them, they granted the Sum of Two Millions Three Hundred Seventy-two Thouſand One Hundred Ninety-ſeven Pounds, for the Maintenance of Forty Thouſand Seamen, and of the two Marine Regiments and for the Ordinary of the Navy, and the Charge of the Regiſtry of Seamen; and the Sum of Two Millions Five Hundred Seven Thouſand Eight Hundred and Eighty-two Pounds, both for the maintaining Eighty-ſeven Thouſand Four Hundred and Forty Men, which according to the Liſt of the Land-Forces delivered into the Houſe, they voted neceſſary to be employed in England, and beyond the Seas; and for the extraordinary Service of the Office of Ordnance, the Pay of the General Officers, and the Charge of the Tranſports, Hoſpitals, and other Contingencies of the War. Beſides which, they afterwards, on December the 23d, voted a Supply of One Hundred Twenty-five Thouſand Pounds, for making good the Deficiency in recoining hammer'd Money, and the Recompence to be given for bringing Plate into the Mints to be coined.

Proceedings againſt Sir John Fenwick.

The 6th, Admiral Ruſſel acquainted the Houſe, that his Majeſty had been pleaſed to lay the Proceedings againſt Sir John Fenwick before his Council, together with Copies of his Information, in which were ſeveral Perſons of Quality, and among others himſelf. That he ſpoke this by his Majeſty's Leave, who had likewiſe directed Mr. Secretary Trumbal to lay the Papers, in which the ſaid Information was contained, before the Houſe.

The

The ſaid Papers were then delivered and read; after which it was order'd that Sir John Fenwick ſhould be immediately ſent for from Newgate; and that no Perſons ſhould be allow'd to ſpeak, or deliver any Paper to him, or receive any from him by the way.

Accordingly, being brought to the Bar of the Houſe, the Speaker Paul Foley Eſq; inform'd him, the Houſe expected a full Diſcovery of all he knew; which was of the more conſequence, becauſe in ſome of the ſaid Papers he had aſſerted, King James thought himſelf ſure of the Army by means of the Lord Marlborough; and of the Fleet by means of Killegrew and Delaval. But not having the face to charge Sir Cloudeſly Shovel with Diſaffection, he own'd Delaval and Killegrew ſaid, Shovel was not to be ſpoke to, but they would ſecure him and let the French Fleet ſail by. He added, the Lord Brudenel is out 6000l. That he did not write to King James in Perſon, but his Wife did. As to his own Correſpondence with the abdicated King, he confeſs'd he had two Letters from him, and no more; he ſaid further, That being coming in his Coach from Hyde-Park, he met General Talmaſh in his, in St. James's Street, that the latter beckon'd to him to go into St. James's Court; that they came out of their Coaches and took a turn or two there, at which time Talmaſh whiſper'd him, We ſhall ſerve both on the ſame ſide. He added farther, Brigadier Mayne promis'd to come over to King James's Intereſt in Ireland; and he ſaid, Indeed I wonder he did not. He confeſs'd, Lieutenant-General Kirk had given King James the ſame Aſſurances. That Sheerneſs was to be ſecured by the Deputy-Governor; that the Lord Montgomery was in the Plot, and had been with him about it ſeveral times. That ſeveral great Lords, as the Duke of Shrewsbury, the Earl of Marlborough, the Lord Godolphin, Admiral Ruſſel, &c. had accepted of Pardons from King James. After which being preſt by the Speaker to make a ſincere Confeſſion, he complain'd, he had been very hardly dealt with, for whatever he had ſaid, the Anſwer was ſtill, 'tis not ſatisfactory. The Houſe then reſolv'd, that the Reflections contain'd in the ſaid Papers on ſeveral noble Peers, Members, &c. were falſe, ſcandalous, and a contrivance to undermine the Government, and create Jealouſies between the King and his People, in order to ſtifle the real Conſpiracy. A Motion was then made for Leave to bring in a Bill to attaint Sir John Fenwick of High-Treaſon; and after a Debate the Houſe divided, Yeas 179, Noes 61. Sir Thomas Trevor, then Attorney-General, was order'd to prepare and bring in the Bill.

Order'd to be attainted of High-Treaſon.

The 9th, the ſaid Bill was read for the firſt time, and the Queſtion put for a ſecond Reading; upon which the Houſe divided.

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divided; Yeas 196, Noes 102; and Friday was appointed for the ſecond Reading: And that Sir John ſhould have a Copy of the Bill, and of the Order, and be allow'd Pen, Ink, and Paper; and that Mr Attorney and Mr. Solicitor ſhould be ready to produce the Evidence againſt him that day.

In the courſe of this Debate, Mr. Manley a Member, having dropt the following Words, *viz.* *It would not be the firſt time that People have repented their making their Court to the Government, at the Hazard of the Liberties of the People:* Exceptions were taken to the ſame, and tho' he endeavour'd to palliate and excuſe them, a Reſolution paſs'd, That for the ſaid Offence he ſhould be committed to the Tower; where he was detain'd till he petition'd the Houſe to be enlarg'd.

Mr. Manley, a Member, committed to the Tower.

The 11th, *Reſolv'd*, That during the Continuance of the Bank of England, no other Bank ſhall be eſtabliſhed by Act of Parliament.

A Debate about the Form of Proceeding in the Caſe of Sir John Fenwick.

The 13th, a Debate aroſe, whether the Mace ought to lie upon the Table, while Sir John Fenwick was examined, or whether the Serjeant ought to ſtand by him with it at the Bar? For there was not a Member in the Houſe that had been preſent at the hearing a Priſoner againſt a Bill of Attainder.

Some Gentlemen held, That Sir John Fenwick being a Priſoner, the Mace ought to be at the Bar, and then no Member could ſpeak: Others ſaid it ought to lie upon the Table, and then every Member was at liberty to ſpeak, and ask Queſtions: A third was of Opinion, the Sheriffs of London could not have him in Cuſtody here; but he muſt be delivered to their Serjeant: To which it was replied, he might be in Cuſtody of the Serjeant without his Mace. And another ſaid, the Mace ought to lie upon the Table: For never any Bill was read, but when the Mace was on the Table.

Others obſerved, that when the Lord Torrington was brought Priſoner from the Tower; and the Houſe, upon account of his Quality, did not order him to the Bar; the Mace was upon the Table, while he was in the Houſe; and he gave an Account of his Conduct, and every Member was at liberty to ask him what Queſtion he pleaſed: And another Member ſaid, if the Mace was not upon the Table, their Mouths were muzzled: They were not in the Nature of Judges; and ſhould they paſs a Vote, that the Judges ſhould ask no Queſtions? Would they act in their higheſt Capacity without being a Houſe? adding, that when the Duke of Leeds appeared there, the Mace was upon the Table.

To this it was anſwered, That though when the Mace was carried from the Table, no Member had the liberty to

ſpeak-

ſpeak; yet any Member had the liberty to deſire, that the Counſel and the Priſoner withdraw; and then the Mace might be brought to the Table.' Anno 8 W. III. 1696.

At length, the Queſtion being put, it paſſed, that the Mace ſhould ſtand by Sir John Fenwick at the Bar.

It was reſolved alſo, that the Bill ſhould be read to Sir John in the Houſe, though the Mace was off the Table: But then that it ſhould be read again after Sir John was withdrawn, when the Mace was upon the Table before the Queſtion was put.

Then Sir John Fenwick was brought in, and the Serjeant took him to the Bar; where he ſtood by him with his Mace: And Sir Thomas Powis and Sir Bartholomew Shower, were admitted as Counſel for Sir John; and Mr. Serjeant Gould, and Mr. Recorder Lovel, appeared as Counſel for the Bill. The Counſel on both Sides.

Mr. Speaker then acquainted Sir John, that the Houſe had ordered a Bill to be brought in, to attaint him of High-Treaſon; which had been once read; and to which they permitted him to make his Defence by his Counſel, before it was read a ſecond Time: But they muſt not permit his Counſel to diſpute the Power of Parliaments to paſs Bills of Attainder, whenever they ſaw fit. After which the Bill was read, being of the following Tenor:

That whereas Sir John Fenwick, Bart. had been indicted for High-Treaſon, on the Oaths of George Porter and Cardel Goodman, for compaſſing the King's Death, and adhering to his Enemies: And whereas the ſaid Sir John had procured his Trial to be put off from time to time, on Pretence of making a full Diſcovery of the Conſpiracy againſt his Majeſty; and, inſtead thereof, had contrived ſeveral falſe and ſcandalous Accuſations; reflecting on ſome Peers and Members of the Commons, with an Intent to undermine the Government, and create Jealouſies between the King and his Subjects: And whereas the ſaid Cardel Goodman, one of the Witneſſes againſt the ſaid Sir John, was in the mean time withdrawn, ſo that his Evidence could not now be had: It was therefore enacted, that the ſaid Sir John Fenwick ſhould be convicted and attainted of High-Treaſon. The Bill read to Sir John.

After the reading the Bill, Mr. Serjeant Gould opened the Charge and the Evidence; but for the Pleadings on each ſide, we muſt refer the Reader to the State-Trials. Mr. Serjeant Gould opens the Charge and the Evidence.

Sir John and the Counſel on both ſides, being withdrawn, a Debate aroſe, whether Sir John ſhould be allowed further time to produce his Witneſſes? which was thus opened by Sir Thomas Littleton.

'Mr. Speaker, the Counſel could not think that the Bill ſhould ſet forth, that Sir John Fenwick was indicted, but that the Houſe would know by what Means. And that Goodman A Debate thereupon. Sir Thomas Littleton.

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Goodman was gone away, and we ſhould not enquire by what Means. What are the Objections made by the Counſel to the Bill? Say they, we are ready to give Reaſons againſt the Bill: They do not ſay downright againſt your Juriſdiction; but that they are ready to ſhew you, it is not reaſonable in this Caſe, as Circumſtances ſtand, to paſs this Bill: Sir John's Petition was to be heard downright againſt the Bill. If that was your Intention, to hear him to that only, I conceive you would not have worded your Anſwer as you did: You ordered him Counſel to make his Defence; and, at the ſame Time, ordered the King's Counſel to produce the Evidence: How could they underſtand it, but to make a Defence to the Evidence? it may be they have a mind to another Fee: Whether you will think fit in the Circumſtances you ſtand, to give them further time, I do not know; but the Circumſtances of the Kingdom, and the King's Life, muſt be conſidered as well as Sir John Fenwick? What is the Meaning that they are not prepared? I ſuppoſe it is to have a Pretence for further time: But I think your Order is ſo plainly worded, that they could not miſtake it.'

Mr. Cowper, 'The Counſel for Sir John Fenwick ſay, we come prepared to make a Defence to every thing charged in the Preamble of the Bill; but what is not charged, we do not come prepared to make a Defence to. Now they conceive the Fact of High-Treaſon is not charged upon him by the Bill; and, if that be true, it is of great Weight; but as it is, 'tis none: For firſt, it is plain, the Preamble recites, that he was indicted for High-Treaſon by the Grand Jury, that is a Charge of High-Treaſon within the Bill: For it ſays, he was charged by the Oaths of his Country, upon the Oaths of two Witneſſes; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, can any one think, that ſits here as a private Judge, that the High-Treaſon thus recited, as found by the Grand Jury, is no Part of the Charge? the very Nature of the Bill ſpeaks: For could any one think, you would ground a Bill of Attainder upon a Suggeſtion, that he, being indicted of High-Treaſon, had ſpirited away one of the Witneſſes, or given a falſe Information? So that this is trifling with the Houſe, with Submiſſion.'

Sir Richard Temple, 'Can any body ſay any thing of the Intention of the Houſe, when it is reduced into a Bill? Is it not the Bill he is to make his Defence to? And the Gentleman who ſpoke laſt, ſays, That no body could think otherwiſe: Why Sir, no body is to think otherwiſe than as the Bill ſtates it.

Now the Thing before you is, Whether upon the Suggeſtions in this Bill, it is fit for you to paſs it? The Caſe of

of Mortimer was, That he had made his Eſcape, being under an Indictment of High-Treaſon, and it came before the Houſe, Whether upon the Statute of 25 Edw. III. it was High-Treaſon? but they did not debate the Fact. Now you have brought a Bill here; and all the ground is, That he was indicted for High-Treaſon; had thus and thus prevaricated and delayed his Trial upon Promiſes of Confeſſion; and in concluſion, one of the Witneſſes is withdrawn. Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any thing but what is ſuggeſted in the Bill. If you had put the Iſſue upon the Guilt of Sir John Fenwick, he muſt have had a fair Trial in ſome Place, and that he cannot have here upon Oath; for upon all Bills of Attainder hitherto, they have had a fair Trial above,' (in the Houſe of Peers.) Anno 8 W. III. 1696.

Mr. Hooper, 'The Queſtion is, whether or no there be a ſufficient Guilt laid to this Man's Charge? For in all Courts of Judicature, this is a certain Rule, you muſt proceed *ſecundum allegata & probata*; and you ſhall not go about to prove a thing unleſs it be alledged. Now the Queſtion is, whether this thing be alledged in the whole Bill, that Sir John Fenwick is guilty of High-Treaſon? and if not, you will not go about to prove what is not alledged. 'Tis true, it is alledged that a Bill hath been found; but ſeveral have been indicted who have been acquitted. It is poſſible the Priſoner at the Bar may be guilty; but I think we muſt obſerve that Method here, that is obſerved every where elſe; and that is, not to go about to prove any thing that is not alledged.'

Mr. Sloane, 'I will allow the Bill might have been drawn better, and that a bare Indictment is not a ſufficient Ground of itſelf for a final Deciſion of this Matter: But when, at the time of finding the Indictment, there were two Witneſſes, and one of them is withdrawn, and, as is ſuppoſed, by his Means; if the Bill ſeems imperfect for any thing before you now, you will not ſtay all Proceedings upon it; but if you ſee it imperfect, and it may be amended, you will amend it at the Committee. I think, the Favour you have given is abuſed, and that it is perfect trifling from the Bar: In one Breath they ſay, they could not get ready, for they had no Notice till laſt Night; and in the next they ſay, they will go on to every thing, but his being guilty; and I believe they never will be prepared for that.'

Mr. Attorney-General, 'Sir, I am very unwilling to ſpeak any thing in this Matter; becauſe, Sir, by the Place I have the Honour to ſerve his Majeſty in, as one of his Counſel, if it was in the Courts below, I muſt proſecute on the Behalf of the King: But, I am very ſenſible, while I am in

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this House, I am in another Capacity; I am to vote here a a Judge, and not as a Party.

'That which I do now trouble you about, is in relation to the Matter that hath been objected, that the Bill does not expressly affirm, that Sir John Fenwick was guilty of High-Treason, but only that he was indicted for it: Truly, I thought, and do still, with humble Submission to the House, That that Matter of affirming him to be guilty of High-Treason, was not to be inserted in the Bill; for that will be the Consequence of your Judgment and Opinion upon hearing of the Evidence. That worthy Member that spake last, said, the Bill might be better drawn: I am sorry we had not his Assistance in it; but, with Submission to his Understanding, I think that had been too much Presumption, till you are satisfied whether he was guilty or no: We could only go so far as to set forth the Faults that we knew; as, that he was indicted, that we can verify, and cannot take this to be like the Case of an Indictment; for there you must affirm such and such things that cannot be altered afterwards; but a Bill in Parliament hath many Steps, you read it several times, and commit it; so that you alter the Suggestions of the Bill as the Case appears to you to be verified; and if you be of Opinion that he is not guilty, you will not condemn him because he is indicted: However, that is not immaterial, but proper to be set forth for a Ground of your Proceedings, that there was a Probability of his being guilty from that Accusation: Therefore, Sir, I confess, I cannot think that those Gentlemen, that are of Counsel for Sir John Fenwick, could think that you did intend to proceed otherwise than to hear Counsel as to the Fact; they could not think that, upon Proof of his being indicted, that would be Ground enough for you to proceed to pass the Bill; for how could any body think, but you would come to examine the Fact? I cannot see how they should come to mistake, unless it was wilfully.

Colonel Granvill: 'Sir, the Counsel (by what I observed from them) have started two Difficulties, and really (to me) both seem very material: The First is, whether the King's Counsel shall be at liberty to prove any thing that is not suggested in the Bill; the other is, whether Sir John Fenwick had due Notice to make his Defence.

'The first is a Matter of very great Moment: You are proceeding upon a Bill, where not only the Life of Sir John Fenwick, but the Life of every Man in England, is in some measure concerned: When a Precedent is made in this Case, no body knows who may be affected or hurt by it; and therefore I desire you will settle that Matter, and have the Judgment of the House, whether they will admit the Counsel to prove

prove any thing that is not ſuggeſted in the Bill: If you will, I do not ſee how any Man that ſtands at the Bar of your Houſe can be prepared to make his Defence; for there ſhall be one Crime alledged in the Bill, and when he comes to the Bar, the Counſel that are to proſecute, ſhall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he ſtares and looks round him, and you had as good allow him no Counſel or Copy of the Bill. This you thought ſo neceſſary for every Man, that was to come upon his Trial for his Life, for Treaſon, that you altered that Trial, and declared, no Man ſhould have any Treaſon proved againſt him, that is not alledged againſt him in the Indictment.

'We have had great Complaints of Weſtminſter-Hall, and if the Parliament ſhould proceed in this manner, may have the ſame again: If they are too raſh in their Proceedings, they will be countenanced mightily in them, if you ſhould proceed againſt a Man, and condemn him for one thing when he is accuſed of another. I deſire to know how we can proceed in a Bill, upon which Sir John Fenwick is to be proved guilty, and he hath no opportunity to anſwer it? I take it, as this Bill is drawn, Sir John Fenwick's Guilt is no way concerned in it: For, whereas the worthy Gentlemen tell you, the Treaſon is ſpecified, there is no Treaſon ſpecified, otherwiſe than he is indicted for it.'

Mr. Whitaker, 'As to the Exceptions made to the Inſufficiency of the Bill, by which they pretend Sir John Fenwick was led into an Error, ſo that he had no due notice; I muſt needs ſay, if they had been in Weſtminſter-Hall, they would have been in the right: But this Houſe is not bound to thoſe Forms; for, I believe, the enacting Clauſe would do the buſineſs of Sir John Fenwick well-enough, if all the reſt were laid aſide; and I will conſider it, with as much Tenderneſs and Conſcience for the Priſoner at the Bar, as any that bring Arguments from Weſtminſter-Hall: I would conſider, whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not notice enough to prepare to make his Anſwer. They ſay, a Recital is no direct Affirmation: In Civil Matters, it is an Affirmation; for to ſay, Whereas ſuch a one is bound, is good in a Declaration upon a Bond; now, I would know, Whether it be not enough to ſay, That he is indicted, without an Allegation that he is guilty? Had the Bill no Recital at all, it might have been neceſſary for them to have deſired the opinion of the Houſe, to what they ſhould have anſwered; but here the Treaſon is ſpecified in the Preamble of the Bill; and I agree, that the King's

Counſel

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Counſel ought not to give Evidence of any Treaſon that is not ſo ſpecified.'

Sir Edward Seymour, addreſſing himſelf to ſpeak on the other ſide, and obſerving a great many Lords in the Gallery, ſaid, 'My Lords, and you Mr. Speaker, what hath been ſaid by that worthy Perſon that ſpoke laſt, no doubt, is true; That if there had been no more than the enacting Clauſe, it would have done Sir John Fenwick's Buſineſs with a Witneſs, or, rather without a Witneſs. But that is not the Queſtion we are diſputing here; the Queſtion is, Whether you will give Sir John Fenwick longer time to make his Defence to that Part he inſiſts on, which is not contained in the Bill? You are well ſatisfied, you cannot go through with the Suggeſtions to-night, and the Debates, and what relates to them; and I find no Perſon againſt putting it off, but becauſe it would be a Delay; and, if it be no delay, that Reaſon is out of doors. They tell you the Counſel could not but take notice of the Matters ſuggeſted in the Indictment; I cannot think that it is reaſonably argued, becauſe they do know the Practice and Method is ſuch, that they can take notice of nothing but what is ſpecified and contained in the Bill: and therefore, there being no Guilt charged on Sir John Fenwick in the Bill, it is reaſonable they ſhould come and accuſe themſelves here, or make a Defence to what is not charged? No: But, ſay they, it is implied. This is an untrodden Path, and you ought to walk as ſecurely in it as you can. 'Tis extraordinary that you bring Sir John Fenwick here to anſwer for Treaſon, when it is allowed, in the Suggeſtions of the Bill, you have but one Witneſs to that Treaſon; and, when you take theſe extraordinary Steps, you ſhould comply with him as much as you can in Forms: For if Treaſon be not Treaſon, unleſs it be proved by two Witneſſes, and you will give him liberty to make his Defence, I think it no loſs of time (for you cannot go through the Bill to-night) to ſee whether Sir John Fenwick be guilty of what is contained in the Indictment: And I will give you one reaſon, why he could not be prepared to make his Defence in ſo ſhort a time, namely, becauſe he could not produce his Evidence, if he had any; and, if you give him longer time, I ſuppoſe you will think fit that Sir John Fenwick ſhould give an account of what Witneſſes he ſhall make uſe of for his Defence, and give him an Order for thoſe Witneſſes to attend *.

Mr.

* *According to ſome Accounts, Sir Edward clos'd this Speech to this purpoſe: 'I am of the ſame opinion with the Roman, who, in the Caſe of Catiline, declar'd, he had rather ten guilty Perſons ſhould eſcape, than one innocent ſhould ſuffer.'*

To

Mr. Harley ſaid, 'I find all Gentlemen that ſpeak of this Subject, do ſay, that this Matter is of an extraordinary Nature, and you have entered into it by very extraordinary Methods: But I muſt obſerve, that this being the firſt Bill of this kind, that hath been brought into the Houſe before any Proof, Gentlemen muſt be excuſed if they are cautious what ſteps they take; and when the Wiſdom of the Houſe hath thought fit to take quite different Methods as to the Preliminaries, it is not to be wondered at, if they meet with Difficulties in their Proceedings. Anno 8 W. III. 1696.

'Some Gentlemen preſs for more time to be given Sir John Fenwick, to be prepared; and others urge, that you ſhould declare whether the Counſel ſhould be heard to any thing, but what is ſuggeſted in the Bill: And, I think, you muſt give a determination to the laſt Queſtion, though the Houſe agree to give him longer time; for if you give him longer time, it will afterwards come to the ſame Debate, Whether they ſhall be heard to any thing but what is ſuggeſted in the Bill? If you ſhould think fit to add any thing, then it will be reaſonable that he ſhould be alſo heard to that; for in the Caſe of the Death of a Man, let him deſerve never ſo much, yet he does not deſerve to die unjuſtly by our hands. It ſeems a very plain Propoſition, that when a Man is accuſed, he ſhould not anſwer to what he is not charged with; and to charge it with Innuendo's and Implications is ſo uncertain, that I have always ſeen it denied in this Houſe; ſo I hope, I ſhall not ſee ſo great an Aſſembly give countenance to it. They did tell you, they were prepared to ſpeak to the Reaſonableneſs of the Bill; but this matter not being ſuggeſted, they are not prepared to ſpeak to it.'

This Debate continued till it was very late, and at length two Queſtions were, by the Direction of the Houſe, put by Mr. Speaker.

Reſolved to give Sir John further time; but that Evidence might be given of the Treaſon in the Indictment.

1. That Sir John Fenwick be allowed further time to produce Witneſſes in his Defence, againſt the Charge of High-Treaſon; and that he name his Witneſſes.

2. That the Counſel, that manage the Evidence againſt Sir John Fenwick, be allowed to produce Witneſſes, touching the Allegations in the Bill, and the Treaſons whereof he ſtands indicted.

Both which being reſolved in the Affirmative, Sir John Fenwick was called in again; and Mr. Speaker acquainted him, that the Houſe was willing to give him till Monday next to make his Defence; and that if he gave in a Liſt of

To which Lieutenant-General Mordant is ſaid to have reply'd as follows: 'The worthy Member who ſpoke laſt ſeems to have forgot, that the Roman who made that Declaration was ſuſpected of being a Conſpirator himſelf.'

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his Witneſſes, he might have his Warrant for their appearing at that time.

Sir John brought to the Bar again.

The 15th, Sir John being brought to the Bar again, Mr. Serjeant Gould opened the Charge and the Evidence again, as before: After which (tho' objected to by the Priſoner's Council, and ſtiffly debated in the Houſe) Captain Porter was called as a Witneſs for the King, and gave the ſame Evidence he had done at the Trials of the other Conſpirators, of their meeting at the King's-head in Leadenhall-ſtreet, and at Mrs. Mountjoy's, at St. James's; at both which Places he affirmed Sir John was preſent, and agreed to ſend over Charnock to France, to invite over French Troops; and that Sir John and all the Company agreed, to raiſe two thouſand Horſe here, and join them on their Landing.

Porter's Evidence.

Then Mr. Serjeant Gould proceeding to ask Porter concerning the Lady Fenwick's and Clancy's tampering with him, which Sir John's Counſel oppoſed, as contrary to Law and the Practice of Courts; there being beſides but one Precedent, on record of a Wife's being admitted an Evidence in her Husband's Caſe, *viz.* Lady Audley's; which had been looked upon as illegal ever ſince.

Debate on admitting Evidence that Lady Fenwick had tamper'd with the Witneſſes.

The Priſoner and the Counſel were ordered to withdraw, and the Houſe entered upon the Debate, whether Evidence ſhould be admitted of the Lady Fenwick's tampering with the Witneſſes? and thoſe who were for hearing this Evidence, obſerved, That if they were tied up by the Forms and Methods of inferior Courts, it was to no purpoſe to bring the Priſoner before the Houſe; if he could have been convicted in the Courts below, there was no occaſion for this Bill: That in the Courts of Common Law all Facts were tried by Juries, but here the whole Houſe ſat as Judges: A common Jury might be influenced by illegal or incompetent Evidence, which might not be fit, therefore, for them to hear; but in the Court of Chancery ſuch Evidence was admitted every day; and the Reaſon was, that a Cauſe was diſpatched ſooner by hearing it than not: That here they ought to inform themſelves by the beſt Lights they could get; and if it ſhould appear Sir John employed his Lady to tamper with the Witneſſes, it would have ſome weight with them.

On the other hand it was obſerved, That if the Houſe was not governed by the Rules of inferior Courts, they ought to be guided, however, by that which was the ground of their Practice, namely, Reaſon and good Senſe, and the common Rules of Equity: The Houſe would not puniſh one Perſon for the Act of another. The Counſel for the Bill had not ſo much as opened, that Sir John was inſtrumental in the withdrawing of Goodman: and if the Lady

Fenwick was concerned in it, this could only affect Sir John by way of Inference. But the Queſtion being put, That Porter be examined to the Attempt of taking off his Teſtimony, it was reſolved in the Affirmative. Anno 8 W. III. 1696. The Houſe reſolve to admit it.

Accordingly Porter was then examined, and declared, he had been offered 300 Guineas, &c. to go into France. One Mr. Roe likewiſe ſignify'd, that he had been offer'd 100 *l.* a Year, to diſcredit Goodman's Teſtimony.

The Counſel for the Bill then mov'd for reading Goodman's Examination, taken before Mr. Secretary Vernon, Goodman himſelf not being in the Kingdom; but this was warmly oppos'd by the Council for the Priſoner, as what was not allowable in a Suit of five Shillings.

The Counſel and the Priſoner were then again order'd to withdraw, and a new Debate aroſe; on which Mr. Manley ſaid, 'Every one that had look'd into the A B C of the Law, knew that Examinations before Juſtices were never read.' To which Mr. Sloan replied, 'I believe I may ſave a great deal of trouble in this matter; for thoſe Gentlemen at the Bar that made the Objection, ſpeak without Book, but I ſpeak by Book, having my Lord Chief-Juſtice Hales's Pleas of the Crown in my hand: I think he was paſt his A B C of the Law; I know not how far this Gentleman is advanced in his Pleas of the Crown in that part, where he ſhews what is Evidence to the Petit-Jury; he ſays, firſt, By the Statute 1 & 2 Philip and Mary, c. 13. The Juſtice hath power to examine the Offender and Informer; and ſo he goes on in ſeveral Particulars, and then he ſays, Theſe Examinations, if the Party be dead or abſent, may be taken in Evidence.' Debate on the reading Goodman's Examination.

Another Member replied, 'That ſuch Depoſitions were never given in Evidence in the worſt of times; even at the Trial of the Lord Mordant, when Juries were diſuſed, it would not be admitted; and they were tried by the Rules of Law, or they were tried by nothing.'

Another ſaid, 'He ſhould not look upon himſelf to be ſo tied up by the Rules of Law, but that he might hear all the Evidence that could be offered: If they could not have the two Witneſſes, on whoſe Teſtimony the Bill was found, they would take ſuch Evidence as they could get.' And one ſaid, he had ſeen a Juſtice of Peace examined concerning the Depoſitions he had taken, and he took it to be ordinarily done.

On the other ſide, Mr. Harcourt obſerved, 'That if they were to collect all the Abſurdities out of the Trials of the late Reigns, they would not find more than had been advanced by the Counſel for the Bill; and if thoſe Depoſitions were Evidence, where the Witneſs was abſent, there had

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been no need of this extraordinary way of proceeding in Parliament. This Gentleman was ſeconded by Mr. Harley, who obſerved, 'That Bills of Attainder, and Judgments of Attainder, had been reverſed, for no other reaſon, but becauſe the Parliament had not proceeded by the Rules of Law; and if they were not bound by the Rules of Inferior Courts, yet they muſt by the Laws and Practice of Parliaments: and it was never known that this Houſe ever admitted Affidavits as Evidence; for if they did, they muſt make this, which was a Superior Court, lame and defective, and to want the Aſſiſtance of an Inferior Court.

'Here it is that the Boundaries are eſtabliſh'd for the Laws and Liberties of Mankind, and this is an Obſervation that is found in Hiſtory, that thoſe that have broke their Bounds down, it hath return'd upon them to their Prejudice: Let us not out of Hatred or Zeal againſt a guilty Man, loſe our own Innocence.'

It was replied by a Gentleman for the Bill, 'That though this might be Evidence in Felony, in a Court of Law, yet it could not be deemed Evidence there in Treaſon, becauſe the Law required two living Witneſſes in Treaſon; there was a Neceſſity therefore of reſorting to the Parliament: But in Caſes of Felony, where two Witneſſes were not required, ſuch Evidence was admitted frequently: The Lord Chief-Juſtice Hales's Opinion, alſo, was ſo, and that was grounded on an Act of Parliament.'

A Gentleman, who was againſt the Bill, thereupon obſerved, 'That if an Act of Parliament could be produced for it, the Debate was at an end; but if there was an Act poſitively againſt ſuch Evidence, then he hoped they would reject it: That the Caſe in the Lord Chief-Juſtice Hales related only to Felony; He ſays, that Informations may be taken of the Perſon himſelf, (though not by the Common Law) by particular Acts of Parliament; and the Depoſitions of Witneſſes might be admitted, but then the Party ought to be preſent; and if they would produce a Statute for an Authority, they muſt offer a Statute that was in Point: He thought it was of the laſt Conſequence to admit Affidavits in that Houſe.'

To this a Member for the Bill anſwered, 'There had been a Statute lately made, indeed, which required two living Witneſſes in Treaſon; but in that very Statute it was provided, that Proceedings in Parliament ſhould not be affected by it; and he was not for refuſing any Evidence in this caſe, though never ſo ſmall.' And a Gentleman obſerving on the other ſide, that an Affidavit was never read in caſe of an Impeachment, which very much reſembled this:

A Member for the Bill took notice, 'That all the Cases which had been cited, were brought from inferior Courts, except the laſt, which related to the Uſage in leſs conſiderable Caſes: But a Bill of Attainder was an extraordinary thing, and never uſed but upon extraordinary Occaſions: The Queſtion here was only as to the Forms of their Proceedings; and the Law had entruſted the Parliament with a greater Power than they were now about to execute: They might declare that to be a Crime, which was deemed no Crime before it was committed; and ſurely they might determine what they would admit as Evidence of a Crime.' Another added, 'There was lodged in the Legiſlature, a Power to judge thoſe Crimes that were ſheltered from the Law; and he thought never any Attainder was brought in upon a juſter Occaſion than this: The Priſoner was not only in a Plot to bring in a foreign Power; but had given in a falſe and ſcandalous Information, to create a Diſtruſt and Jealouſy between the King and his People; and had trifled with the Government, and gained ſo much Time, that he had found an Opportunity to corrupt one of the Witneſſes; and it would be hard if the Legiſlative Power could not reach him.'

It was replied by the other ſide, 'That though this Houſe was not bound by the Rules of inferior Courts, they ought to give ſuch Rules, and make ſuch Precedents, as were fit for other Courts to imitate: That this might be a dangerous Precedent for future Parliaments to act by; For ſuppoſe the Information Sir John Fenwick had given in, ſhould hereafter be produced as Evidence againſt any of thoſe honourable Perſons he had accuſed; and ſome Raſcal in a future Reign ſhould come in alſo againſt them, would it not be thought a great Hardſhip, and a Piece of Injuſtice, to make ſuch a Paper to ſupply the Place of a ſecond Witneſs; and paſs a Bill to attaint them of High-Treaſon on ſuch Evidence? Of what Conſequence would this be?

But the Queſtion being put, That the Information of Cordell Goodman, taken upon Oath, the 24th of April, 1695, ſhould be read: It was carried in the Affirmative; Yeas 218, Noes 145.

Reſolved that Goodman's Examination ſhould be read.

Then the Priſoner and the Council were called in again; and the Information of Goodman, made before Mr. Secretary Vernon, was read; wherein he depoſed, That there had been a Conſpiracy to ſeize the Perſon of King William, and raiſe a Rebellion, for two Years then laſt paſt: In which he charged Sir John Fenwick with being a Principal, and brought ſeveral Circumſtances to prove it.

The Tenor of it.

In ſupport of this, two of the Grand-Jury declared to the Houſe, that Goodman gave the like Evidence before them, which had induced them to find the Bill.

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A Motion being made to adjourn, it paſs'd in the Negative, Yeas 141, Noes 163.

The Record at the Conviction of one Cook, another of the Plotters, was then offered, by the Council for the Bill: Goodman's Evidence, ſaid they, in that Caſe, affecting Sir John Fenwick as much as Cook himſelf.

Debate on the Record of Cook's Conviction,

This gave riſe to another Debate, and the Houſe being clear'd in order thereto; a Gentleman, who was againſt the Bill, obſerved, 'That ſuch Evidence had never been admitted in a Court of Law, or in that Houſe; namely the Evidence that was given at the Trial of another, which Evidence was to be us'd againſt a Perſon who was not preſent, and had no Opportunity of defending himſelf againſt it.' Another Member demanded, 'If they were to read all the Trials for the Plot.' Whereupon it was demanded, by a Gentleman who was for the Bill, 'Why they admitted the Evidence Goodman had given to the Grand-Jury to be repeated? This was but the Evidence of what he had ſaid to the Petit-Jury: If nothing but ſtrict Proof was to be offered, this Bill had never been brought in; but they were to accept of ſuch Proof as the Nature of the Thing would bear.'

To which the other ſide anſwered, 'If they had determined at firſt, that they would not expect legal Proof, they might have ſhortned their Debates pretty much.' Another ſaid, 'They were put upon paſſing a Bill of Attainder againſt a Man, and were not allowed to talk of Proofs: If they had no Evidence for it, he was ſure there was Evidence againſt it: For at Cook's Trial, two or three Witneſſes had ſworn, that Goodman was not at the Meeting at the King's-Head, where he ſwore he was.' Another Gentleman put them in mind, 'That a great many Judgments in the late Reign had been reverſed, becauſe they received ſuch Evidence at thoſe Trials, as was not legal Evidence; and that this Grievance was taken notice of in their Bill of Rights.'

To which it was replied, by a Gentleman for the Bill, 'That had Goodman ſworn at that Trial, that Sir John Fenwick was not at the King's-Head, Sir John might have produced a Witneſs, to prove what he had ſworn; and why might not the Evidence which made againſt him be proved?' Whereupon a Member, who was againſt the Bill, replied, 'It was one thing to produce a Record to convict or attaint a Perſon, and another, when it was produced, to prove a Man perjured, or to invalidate his Teſtimony: For when Evidence was brought againſt a Priſoner, he had no way to leſſen it, but by what was collateral: And where the Witneſs had given contrary Evidence at another Trial, or the Priſoner had been acquitted, Then the Record might be made

made uſe of againſt that Witneſs; but could never be made uſe of to convict or attaint any Perſon.'

The other ſide ſaid, 'They did agree, that neither the Conviction of Cook, nor any Evidence upon his Conviction, could be Evidence againſt Sir John Fenwick: But it was one of the Allegations in the Bill, That ſeveral Gentlemen were preſent at the Meeting at the King's-Head, where Sir John Fenwick was charged to be; and they produced it to make good that Allegation.' And the Queſtion being put, That the Record of the Conviction of Peter Cook be read, it paſſed in the Affirmative; Ayes 181, Noes 110; and accordingly that Record was read.

Reſolved to read the Record of Cook's Conviction.

The next Thing the Council for the Bill propoſed, was, to examine ſome of the Jury-men who ſerved at Cook's Trial, and ſome other Witneſſes, to prove what Goodman had ſworn at that Trial; which the Council for the Priſoner oppoſing, they were all ordered to withdraw again.

The Evidence of what Goodman ſwore at Cook's Trial offered.

Then a Member, who was againſt the Bill, ſaid, 'He thought it had been admitted by the other ſide, in the former Debate, That no ſuch Evidence ought to be admitted: But, if they were not to be guided by the Rules of Weſtminſter-Hall, he was ſure they ought not to ſeek a Way to the King's Favour, by attainting a Man of High-Treaſon, upon incompetent Evidence.'

A Debate thereupon.

It was ſaid on the other ſide, 'That it was every Day's Practice in Civil Caſes, to hear what a Witneſs had ſaid at another Trial between the ſame Parties, where a Witneſs was dead.' To which it was anſwered 'That in thoſe Courts a Witneſs muſt ſwear true at his Peril; for if he did not, he might be puniſhed for it: But here, if he takes away a Man's Life by what he ſays, what Remedy was there againſt him?'

Others ſaid, 'If there was not another Place where the Witneſſes would be ſworn, they could not give their Conſent to the paſſing this Bill, for the Witneſſes for the Priſoner were not ſworn: So that they could only give an Opinion upon the Probability of the Matter.'

Another Member againſt the Bill, ſaid, 'He could not but take notice of what had been ſaid by the other ſide, That they had done as much as this comes to already: This made him ſtill more apprehenſive, and to take care what he did now; ſince what the Houſe did, had ſo quick an Operation, and they were already citing Precedents of that very Day, and ſtill making one thing a Handle to draw on another.

However, it was *Reſolved* upon the Queſtion, That the Council for the Bill ſhould be allowed to examine Witneſſes of what Goodman ſwore at the Trial of Cook; Ayes 180,

Reſolved to examine the Witneſſes of what Goodman ſwore at Cook's Trial.

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180, Noes 102: And thereupon the Priſoner and the Council being called in again, two or three of the Jury-men at Cook's Trial were examined, as to what Goodman ſaid at that Trial; and anſwered, That Goodman depoſed, he was introduced into the Company of the Conſpirators at the King's-Head, by Mr. Porter; and there Sir John Fenwick and the reſt agreed to ſend Charnock to France, to procure Forces from thence; and another Perſon, who was preſent at Cook's Trial, teſtify'd the ſame: And it being demanded of the Witneſs, If any Exception was taken then to Goodman's Credit? he anſwered, It was objected that Goodman had been guilty of ſeveral Crimes; to which it was ſaid, he had his Pardon, and was then a good Witneſs.

Sir John's Letter to his Lady offered as Evidence; but rejected.

Then the Council for the Bill deſired to read the Letter above mentioned to be written from Sir John Fenwick to his Lady from Romney, after he was apprehended: But Sir John's Council inſiſted, that this Caſe came ſhort even of Colonel Sidney's; this Piece of Evidence was therefore void. And it being now very late, Sir John's Council were ordered to make their Obſervations on the Evidence for the Priſoner the next Morning: But were told, If they had any Witneſſes to examine, they muſt produce them that Evening; for they could not hear Witneſſes afterwards. To which Sir John's Council anſwering, They ſhould call no Witneſſes; but when they came to ſpeak, they ſhould give the Houſe Satisfaction why they did not think it neceſſary to produce any; the Priſoner and his Council withdrew, and the Houſe ſoon after broke up.

The 17th, Sir John Fenwick and the Council on both ſides were called in again; and the Speaker directing the Council for Sir John to make their Obſervations on the Evidence that had been given; they did ſo; and were reply'd to by the Council for the Bill. After which, both Parties being withdrawn, Admiral Ruſſel moved, that Sir John might be called in again, and asked, What Proof he had, that he (the Admiral) ſent Captain Lloyd to France, and was guilty of the other Facts mentioned in the Paper he ſent to the King?

The Gentlemen charged by Sir John, move, he might prove the Charge.

Then Colonel Crawford for himſelf, Colonel Godfrey for the Lord Marlborough, Mr. Bridges for the Duke of Shrewsbury, Mr. Boſcawen for the Lord Godolphin, and Colonel Granvill for the Lord Bath; deſired Sir John might be asked, What Proof he could make of the Facts, he had charged them with reſpectively in the ſaid Paper?

Another Member moved, That he ſhould be asked in general, what Proof he had of the Particulars in that Paper? But at length it was agreed, that the Paper ſhould not be produced; and that they ſhould only ask him upon every

every Name in that Paper, in the Order they were mentioned there, What he knew of that Gentleman? And accordingly, Sir John and his Council were called in again, and Mr. Speaker demanded of him, What he knew of the Lord Godolphin? (being the firſt Perſon mentioned in the Paper.) To which Sir John anſwering, He hoped they would not put him upon anſwering any thing that might hurt himſelf, he was ordered to withdraw.

Sir John refuſes to anſwer on that Head.

Then it was moved, That Mr. Vernon might give an Account of Sir John's Practices, to get his Trial put off from time to time, on pretence of making a Confeſſion; this being one of the Allegations in the Bill, of which no Proof had been made: And it being agreed, that this ought to be done in the Preſence of Sir John and the Council, they were called in again: And Mr. Vernon related, that the Lady Mary Fenwick had applied to him to get Sir John's Trial put off, on pretence of his making Diſcoveries; and that ſeveral of the Miniſtry had attended Sir John, on his Promiſes of making a full Confeſſion: but that he had only amuſed them from time to time, till Goodman was gone.

Mr. Vernon relates the Endeavours uſed by Sir John to put off his Trial.

After which Mr. Speaker demanded of Sir John's Council, If they had any thing to obſerve upon that Head?

Sir Thomas Powis anſwered, He did not find there was any Degree of Treaſon in this Part of the Charge; and what Crime they would conſtrue it, he could not tell: That it was uſual for Perſons, under an accuſation, to endeavour to put off their Trial, on Account of the Abſence of their Witneſſes, or for other Reaſons: But this was no Crime; at leaſt, not of the Nature the Bill charged.

The Obſervations of his Council upon it.

Sir Bartholomew Shower added, If Sir John had prevaricated, as they called it, he hoped that was far from making him guilty of High-Treaſon; and that if this was an Offence, it was ſo at Common-Law, and he might be puniſhed for it by common Methods: And if it was no Offence, he hoped they would not make it an Offence by a new Law, ſo as to inflict the greateſt Puniſhment for ſuch an Artifice.

The Priſoner and Council being withdrawn, the Bill was read a ſecond time, after which there was a profound Silence: Whereupon Mr. Speaker demanding, if he ſhould put the Queſtion of Commitment? a Debate aroſe, which was begun by Sir Thomas Dyke, who ſaid, 'He hoped he would not put the Queſtion of Commitment, till ſome Exception was made to the Bill; for he was ſure it was as liable to Exceptions, as any Bill that had been brought in a great while.'

A Debate on the ſecond reading of the Bill.

To this it was replied, 'That the Parliament would never take a Cauſe from the ordinary Courts of Juſtice, or attaint a Perſon of High Treaſon, unleſs in extraordinary Caſes: But here, it appeared, they had been deprived of the Evidence

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dence that was neceſſary in Inferiour Courts; and, in ſuch a Caſe, it was uſual for the Parliament to interpoſe: For the Parliament were not bound down by what was called legal Evidence; but might make uſe of any Information that could give them any Light into the Matter: They were Judges of their own Methods, and could paſs a Judgment on Sir John Fenwick's Guilt, from the Circumſtances before them; and were not tied down by the Rules of Weſtminſter-Hall: That this Power indeed had been ſeldom exerted, but where the Party was withdrawn from Juſtice, and could not be come at in the ordinary Courſe: But this was a parallel Caſe; they could not come at Juſtice in the ordinary Courſe, their Witneſs having been tampered with and withdrawn; and therefore, from what was admitted on the other Side, the Parliament ought to exert their Power, when the Offender could not be come at otherwiſe. This Caſe was proper to be brought before the Parliament, which was veſted with a diſcretionary Power, to do whatever they apprehended for the Good of the Kingdom; and this they looked upon as a fit Occaſion to exert that Authority: That, indeed, this Power was like Thunder in the hands of Providence, not to be uſed but upon extraordinary Occaſions; and then it never ought to fail of doing Execution: For Men would trifle and contemn that Power which was not able effectually to exert itſelf. Some Gentlemen were afraid of making an ill Precedent; but it was for that very Reaſon others were for paſſing the Bill: For as the Law ſtood, he was but a bungling Politician, that could not ruin the Government, and yet not come within the Bill of Treaſon to be hanged for it: And therefore, for the keeping Miniſters of State in awe, and that the Parliament might have it in their power to puniſh ſuch Offenders as they ſaw fit, as well as the Priſoner, they were for the Bill.

'It had been objected indeed, that Sir John Fenwick's Life was not of that Conſequence as ſome pretended: He was not ſo conſiderable, that his Eſcape could bring any Danger to the Public. But it was a very juſt Obſervation, that if a Plot was diſcovered, and not thoroughly proſecuted, it would ſtrengthen and grow upon the Adminiſtration; and it was ten to one, but the Government was ſubverted by the Conſpirators in the end. That no one could imagine, that Sir William Perkins, Sir John Friend, and the reſt that had been diſcovered, were the only Perſons concerned in this Conſpiracy; there muſt be much greater Men concerned in it: And when they ſaw ſuch a Struggle to get People out of Jayl, and ſend them out of the Way, they muſt ſuppoſe there was ſomething extraordinary ſtill to be done: And they would not have Men think to ſecure themſelves by bribing and

and tempering with the Witneſſes. It was notorious that Parties were forming for King James; Perſons were plotting in every Part of the Kingdom, and an open Invaſion threatened: And, if this was not a time to exert their extraordinary Power, when would it be a proper time?—Others obſerved, that if the Laws of God and Nature required, that no Man ſhould be put to death without two Witneſſes, it was ſtrange that all Chriſtian Nations were not governed by ſuch Laws: But in Fact, no two Nations agreed in their Manner of Proof; and we differed from all other Nations, in bringing the Witneſſes and the Priſoner Face to Face; and requiring two Witneſſes in Caſes of Treaſon: Nor did we ourſelves, require the ſame Proof in ſome Caſes as we did in others; for one Witneſs was ſufficient in Felony: And before the Statute of Edward VI. any Evidence was ſufficient, even in Treaſon, which was ſufficient to incline the Jury to give a Verdict: And for the Treaſon of Coining, ſuch Evidence was ſtill ſufficient. That if this Precedent had been made in the Caſe of an innocent Perſon, or even where the Fact was doubtful, by a prevailing Party, it had been an ill Precedent: But it being made for a Man that was notoriouſly guilty, and one who deſerved this extraordinary Reſentment of the Nation; and who would have been brought to Juſtice in the ordinary Manner, if he had not eluded it, and made it impracticable; they thought, if it ſhould appear, that the Nation would not be put off ſo, but make an Example of him, Poſterity would applaud and thank them for it. They did not however condemn him, becauſe he had protracted his Trial; but becauſe he had been guilty of High-Treaſon, the worſt of Treaſons; which would have been proved againſt him in the ordinary Way of Proceedings, if he had not pretended to make Diſcoveries, and by that Means put off his Trial till a Witneſs was gone; and when he found himſelf out of the ordinary Reach of Juſtice, ſet the Juſtice of his Country in defiance: And if theſe were not ſufficient Reaſons to put him to death, yet they were ſufficient to juſtify their Proceedings againſt him in this Manner. And notwithſtanding Sir John was repreſented as too inconſiderable to endanger the Government; it appeared he was to have been a General, and was acquainted with a great many Officers: That he had not made an Atonement to his injured Country, as he ought to have done, by an ingenuous Confeſſion; and unleſs they proceeded ſteadily againſt him, they ſhould have none of the Diſcoveries they expected. Not that they would hang a Man becauſe he would not confeſs; but, becauſe he had been guilty of the deepeſt Treaſon, and aggravated his Offence in that Manner, he deſerved to die; unleſs he would merit his Life by a Diſcovery of what he knew.'

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Arguments againſt the Bill.

On the other hand, the Gentlemen who argued againſt the Bill, inſiſted, 'That the Perſon they intended to condemn by this Bill was forthcoming: He had been indicted, had pleaded, and was ready to undergo his Trial in the ordinary Courts of Juſtice: That the meaneſt Subject was entitled to a Trial by Jury: Even the Regicides who actually murdered the King, and did not fly, were admitted to a Trial in the ordinary Courts of Juſtice, though a Bill of Attainder paſſed againſt the reſt: And it muſt be thought ſtrange, that the ſame Parliament, which paſſed an Act requiring two Witneſſes in Treaſon, ſhould paſs an Act to put a Man to death without one legal Witneſs, and without allowing him any Trial at all. If Mr. St. John's Poſition in Lord Strafford's Caſe was admitted, (*viz.*) That a ſubſequent Law might be made, to take away a Man's Life, without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker; then no Man was ſafe. In the Lord Strafford's Caſe, the Proceedings were firſt by Impeachment: The Witneſſes had been examined upon Oath in the Houſe of Peers: and the Bill of Attainder recited, that the Facts had been fully proved. But for a Bill to begin originally in the Houſe of Commons; and Judgment to be given there to deprive a Man of his Life, and all that was valuable, without the Sanction of an Oath, was extremely hard.——That Biſhop Burnet, in his Hiſtory of the Reformation, had obſerved, that ſuch Bills could not be enough condemned; for that they were a Breach of the moſt ſacred and unalterable Rules of Juſtice. Had the Government been in danger from the Priſoner, indeed ordinary Rules might have been diſpenſed with: But this being for an Offence committed a Year before, the Perſons executed who were concerned in it, and all the Danger over, there could be no manner of Reaſon for reſorting to their Legiſlative Power to puniſh this Man: The moſt that could be thought reaſonable in this Caſe, would be, to enact, that Goodman's Evidence, the Witneſs who was fled, ſhould be read at his Trial: They could not condemn the Priſoner, and thereby put him in a worſe Condition than if Goodman was here; for then he would have had a Trial by a Jury, the Benefit of his Challenges, the Witneſſes ſworn, and might have made his Exceptions to their Teſtimony; all which he was deprived of here: That the Parliament had Power to make ſuch a Law, was admitted; but they thought it ought not to be uſed but upon extraordinary Occaſions, when the Offenders were ſo big, that they could not otherwiſe be brought to Juſtice; or where the Crimes did not fall under the Denomination of the Common Law, which was not the preſent Caſe: That there was not one Precedent for attainting a Perſon who was in Cuſtody and forthcoming; but what had been univerſally branded: They

They were rather Reproaches to the ill Reigns they were made in, and to be marked out as Rocks to be avoided, than Patterns to be imitated: That though it was true they were not tied up by the Rules of Weſtminſter-Hall, yet what was Reaſon and Juſtice in Weſtminſter-Hall was ſo every where elſe; and ſo far as thoſe Rules were founded on Reaſon and Juſtice, they ought to be imitated: That they had indeed made a Law to prevent People's being executed by an Arbitrary Power, and in an unlawful Manner in Weſtminſter-Hall; but if they made this Example, the Subject might be perpetually executed here, and would be never the ſafer for the Bill of Treaſons: That after this Precedent, every Man would be in danger of being proceeded againſt in like manner; and we might ſee Parties hang one another by Turns, with great Violence. Some Gentlemen indeed had ſaid, they did not aim at the Priſoner's Blood, but at his Confeſſion; and ſo he was to be racked to Death from one reading of the Bill to another, and poſſibly might come to be hanged at laſt, not for High-Treaſon, but for not confeſſing it. As to the Safety of the Government, which was pretended they did not ſee how the Safety of the Government depended, upon his Life; or that it would be a Penny the worſe if the Bill did not paſs: The Preamble to the Bill for attainting the Duke of Monmouth gave a ſubſtantial Reaſon for it, that he was in Arms and could not be brought to Juſtice, which implied that if he could have been brought to Juſtice, they would not have attainted him: They did admit indeed, where the Government was at ſtake, and nothing could preſerve the Kingdom but breaking through the ſettled Forms, there the Government might, and in all ſuch Caſes would, break through them, whatſoever Rules were preſcribed; but they did not think Sir John Fenwick's living or dying of that Conſequence as the paſſing this Bill of Attainder was. As to the Allegation of his having protracted his Trial, it was natural, and what every body in ſuch Circumſtances attempted, and could not be a ſufficient Ground to attaint him: And as to his being inſtrumental in withdrawing the Evidence, this was neither proved, or ſo much as ſuggeſted in the Bill; and if it had, did not demand ſo ſevere a Puniſhment, any more than his having aſperſed ſome great Men, as the Bill charged: That it was true, he had charged ſome Gentlemen, and it was very hard they ſhould ſit as Judges on the Perſon who accuſed them, and endeavoured to baffle his Evidence, by cramming a Bill of Attainder down his Throat: And there were other Gentlemen in the Houſe, who were the King's Counſel and Proſecutors; and it was hardly agreeable to Juſtice, that theſe ſhould ſit in Judgment on the Priſoner: That High-Treaſon indeed was

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a great Crime, but what was there in this Caſe to make it differ ſo much from other Treaſons, that they muſt proceed in this extraordinary manner? He had aſperſed great Men, he had prevaricated with the Government, and protracted his Trial till a Witneſs was withdrawn: But if theſe Reaſons were ſufficient to induce them to have recourſe to a Bill of Attainder, then whenever there ſhould be but one Witneſs for the future, by virtue of this Precedent, the Legiſlature muſt interpoſe, and a Bill of Attainder be brought in. True it was, this might ſufficiently convince Men that they could never be ſafe, how artful ſoever they were in practiſing againſt the Government: But then, what Security to the Subject were all the Laws made for regulating Trials in Caſes of Treaſon? If when there was but one Witneſs, and perhaps not one, the Perſon accuſed might be taken out of the ordinary Courts of Juſtice and condemned to die, becauſe common Fame had declared him guilty: And if Goodman's Paper, who was withdrawn, was to be admitted as an Evidence before the Houſe, the Conſequence of that would be, that, if a Miniſter of State could hereafter get an Examination ſworn before a Juſtice of Peace, and then ſend the Witneſs away, a Bill of Attainder might be clapped on the Back of the Party accuſed, and this ſhould be deemed ſufficient Evidence to deſtroy him: If after this Precedent, forty Men ſhould be taken up for a Plot, and there ſhould be two Witneſſes againſt twenty of them, and one againſt the other twenty, then a Bill of Attainder muſt be brought in to condemn the latter without legal Evidence: And if this was to be the Method of proceeding for the future, Men would be more unſafe than they were before the Acts of Treaſon were made, inaſmuch as Parliaments were as liable to be influenced as Juries, and their Power as irreſiſtable.

'That moſt of the Attainders which had been produced as Precedents had been reverſed; becauſe the Perſons condemned had not had the Benefit of the Law, and if that was a good Reaſon for reverſing ſuch Attainders, it was a good Reaſon alſo why they ſhould not proceed by Attainder: And to tell them the Government was in Danger, and that the Fate of England and Europe depended on this Bill, was certainly offered, rather to amuſe than convince them; it was impoſſible the Government could be in Danger from one they had in their power, and might reſtrain him of his Liberty for Life, and whoſe Eſtate and Intereſt were ſo inconſiderable. It was ſtrange, the Government could not ſupport itſelf without taking away the Life of ſuch a one, contrary to the Rules of Law.

The Bill paſs'd on the ſecond reading, with an Amendment,

Theſe Debates having continued till Eleven at night, the Queſtion was put, That the Bill be committed, which paſſed in

in the Affirmative, Ayes 182, Noes 128: But the Committee made an Amendment, by adding the following Words to the Bill, *viz.* of which Treaſon Sir John Fenwick is guilty.

Diviſions on a Bill for further regulating Elections.

The 23d, the Queſtion was put for the ſecond reading of a Bill for farther regulating Elections of Members. (Againſt which, the principal Cities had petition'd, as calculated to incapacitate ſeveral Perſons for want of Eſtates in Land from being elected.) It paſs'd in the Affirmative, Yeas 50. Noes 43.

The Queſtion being put, that the Bill be committed, it paſs'd in the Affirmative, Yeas 79. Noes 64.

The Bill to attaint Sir John Fenwick order'd to be ingroſs'd.

The ſame Day Mr. Norris, from the Committee of the whole Houſe, reported the Amendments made to the Bill to attaint Sir John Fenwick, which were agreed to; and the Queſtion being put, that the ſaid Bill and Amendments be ingroſſed; it paſſed in the Affirmative, Yeas 125. Noes 88.

The Coin-Bill paſs'd.

The 24th, the Bill for remedying the ill State of the Coin was paſs'd.

Report of the Committee appointed to inſpect the State of Trade.

The ſame Day, Mr. Blathwaite preſented the Report of the Committee appointed to inſpect the Trade of this Kingdom; in which the Dearneſs of Labour, the Exportation of Wool, (properly called the ſelling the Trade inſtead of the Commodities of the Kingdom,) the importing prohibited Goods, by Smugglers, the pernicious Art of Stock-jobbing, and the Neglect of our Fiſheries, are made appear to be the principal Reaſons, why the Commonwealth was not in ſo flouriſhing a State as might be both expected and attained.

In the ſaid Report the Trade of the Plantations, in particular, Sugars, Tobacco, and Naval-Stores, were, in a particular manner, recommended to the Conſideration of Parliament.

Report of the Miſcarriage of the Land-Bank.

The ſame Day, likewiſe, Mr. Chancellor of the Exchequer, according to Order, preſented to the Houſe an Account how the 2,564,000l. deſigned to be raiſed by a Duty on Salt, Glaſs, and Tobacco-Pipes, came to fail; the Account of which was, that after all manner of Expedients had been propoſed by the Commiſſioners (for taking Subſcriptions to the National Land-Bank,) to render their Project palatable to the Public, the Books were open'd at Exeter-Change, June 5. when the Lords of the Treaſury ſubſcribed 5000l. on the King's behalf: That 2100l. more was all ſubſcribed, between that and the Expiration of the Term limited by the Act for taking the ſaid Subſcriptions. And that the ſaid Commiſſioners aſcribed the Cauſe of their ill Succeſs to be the large Intereſt allow'd upon all Securities both public and private, at the ſame time that they were limited to 5 *per Cent.*

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The 25th, the Bill againſt Sir John Fenwick was read a third time, and * ſeveral Speeches where made for and againſt it; the Subſtance of which is contain'd in the two following.

Mr. Methuin.

'Mr. Methuin, Mr. Speaker, I have not troubled you in any of thoſe long Debates you have had on this Occaſion, and do it unwillingly now; but I do think it every Man's Duty, in a Caſe of this great importance, freely to own his Opinion, and give his Reaſons for it.

'The greateſt Part of the Debate hath run upon two things: On the one ſide, the Inconveniency of Bills of Attainder, or at leaſt the having them too frequent: On the other ſide, that it is neceſſary to have them ſometimes, that no Perſons might think they were out of reach, if they could evade the Laws that were made to puniſh ordinary Offenders.

'I think both theſe Points too general, and that this Bill (as every other) ought to have its fate upon the particular Circumſtances of the Caſe before you; and whoever gives his Affirmative to this Bill, ought to be convinced that Sir John Fenwick is guilty of High-Treaſon; and alſo that there are extraordinary Reaſons why the Nation does proſecute him in ſo extraordinary a Manner: And I do think neither of theſe is ſufficient alone.

'If between the Indictment and Arraignment or Trial, Goodman ſhould have died, and there had been no other reaſon for attainting Sir John Fenwick, but only the want of his Evidence; I ſhould not have thought it a ſufficient reaſon, though we ſhould have an Opportunity of being informed of his particular Evidence, and believed him guilty: And if Sir John Fenwick does not appear guilty, I do not think any Reaſon of State can juſtify this Bill, though he hath prevaricated and behaved himſelf to the Diſſatisfaction of every body; therefore I think, there muſt be both theſe.

'You have heard the Evidence, and I ſhall not repeat it, but rather come to thoſe things that diſtinguiſh Sir John Fenwick's Caſe; only this, you have received the Evidence againſt Sir John Fenwick, and given him liberty to make his defence, and have fully heard him; which, I think, hath altered the reaſon of a great many Precedents, cited from my Lord Coke and other Authors.

'That which diſtinguiſhes this Caſe, is, the great danger the Nation was in from this Conſpiracy, and the Senſe the Nation hath had of it; and I find, by the general Opinion of all Perſons, this danger is not thought yet at an end.

'There ſeems likewiſe to be an Opinion as general, that Sir John Fenwick could have contributed to your ſafety by a diſcovery.

'The

* *For the Speeches at large on this critical Caſe, ſee the State-Trials.*

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'The next Circumſtance is, that Sir John Fenwick, knowing this and the expectations the Nation had from him, that he could have contributed to your ſafety, hath made uſe of that to put off his Trial; and, at laſt, has made ſuch a Paper, as does ſhew an inclination to do you all the prejudice he can; by pretending to create new dangers; and by this means Sir John Fenwick, againſt whom there were two Witneſſes when he was indicted, hath delayed his Trial, ſo that now there is but one; and there is a violent preſumption that this Perſon is withdrawn by the practice of Sir John Fenwick's friends.

'There remains yet with me as great a Conſideration as any of theſe; the public Reſentment of the Nation for ſuch his behaviour, is the only Means his practice has left you to prevent the danger that yet remains; and it ſeems neceſſary for your ſafety, to take the next beſt way, to that he could have led you to by his diſcovery. Againſt the Evidence that hath been given, there have been great Doubts raiſed, not ſo much whether it be ſuch Evidence as ought to incline us to believe him guilty: But whether it be ſuch as you ſhould hear in the capacity you are in; and after it is found ſuch as it is, that is to ſay, not ſuch as would convict him upon another Trial, whether you ought to credit it, and that it ſhould influence you to give your Vote for this Bill of Attainder? This is a doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I deſire leave to ſpeak to that particular.

'Tis ſaid, that you are trying Sir John Fenwick, that you are Judges, and that you are both Judges, and Jury, and that you are obliged to proceed according to the ſame Rules, though not the Methods of Weſtminſter-Hall, *ſecundum allegata & probata*.'

'But the State of the Matter, as it appears to me, is, that you are here in your Legiſlative Power, making a new Law for the Attainting of Sir John Fenwick, and for exempting his particular Caſe from being tried in thoſe Courts of Judicature, and by thoſe Rules which you have appointed for the Trial of other Cauſes, and trying of it yourſelves (if you will uſe that Word, though improperly) in which Caſe the Methods differ from what the Laws made by yourſelves require in other Caſes; for this is never to be a Law for any other.

'Methinks this being the State of the Caſe, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in Weſtminſter-Hall, and other Judicatures; for it muſt be agreed, the ſame Rules of Evidence muſt be obſerved in another Place,

as

Anno 8 W. III. 1696. as well as Weſtminſter-Hall, I mean in Impeachments; and it has always been ſo taken.

'The Notion of two Witneſſes being neceſſary, has ſo much gained upon ſome Gentlemen, that we have had it ſaid, that this is required by the Law of Nature, the univerſal Law of Nations; nay, by the eternal Law of God, and I think, if it was ſo, there would be no doubt but it would oblige us.

'And therefore to go to the bottom of the Matter: That any Man deſerves to be puniſhed, is becauſe he is criminal: That this or that Man deſerves it, is becauſe he is guilty of a Crime, let his Crime be made evident any way whatſoever: For whatſoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

'Now, the Rules for examining whether any Perſon is guilty, or not, and the Evidence that is allowed as ſufficient, is different in all Nations: No two Nations agree in the ſame Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence againſt them.

'Your Trials differ from all other Nations, not only that you are tried by a Jury, which is particular to you, but that the Witneſſes are to be produced Face to Face before the Offender; and you have made Laws, that there ſhall be two Witneſſes in caſe of High-Treaſon; and herein you are the Envy of all other Nations.

'Sir, the Evidence that is to be given againſt Criminals, differs in the ſame Nation, when the Offence differs; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treaſon; and the Evidence to convict a Man for the ſame Crime, hath been different in the ſame Nation at different times. No doubt, by the Canon-Law of England, that Evidence was ſufficient to convict a Man of any Crime, which was ſufficient to make the Jury believe the Perſon guilty. Thus before the Statute of Edw. VI. a Man might be convicted of Treaſon by one Witneſs; though that Statute was made upon great reaſon, and appears to be for the Public Good, by the general Approbation it hath received; yet I don't think in your Proceedings here you are bound by it.

'But Sir, it is ſaid, ſhall we that are the ſupreme Authority, (as we are part of it) go upon leſs Evidence to ſatisfy ourſelves of Sir John Fenwick's Guilt, than other Courts? And ſhall we reſort to this extraordinary way in this Caſe?

'Truly, if it ſhake the Manner of Trials below, I ſhould be very unwilling to do it; but I do take it clearly, that it cannot make the leaſt Alteration in the Proceedings of any Court; but on the contrary, I think there is no ſtronger Argument

guments for your reſorting to this extraordinary Way, than that of the Care and Caution with which your Law hath provided for Defence of the Innocent. For if we conſider all thoſe Laws that have been made for that Purpoſe, 'tis plain it muſt have been in the View of our Anceſtors, that many Criminals might by this means eſcape. Your Laws are made for your ordinary Trials, and for thoſe things that happen uſually; and there is no Government we know in the World, where there is not Reſort to extraordinary Power, in Caſes that require it. Your Government indeed hath this Advantage, that you can keep to Rules which others cannot: For in a very wiſe Government (as was obſerved by a Perſon that was in this Houſe the laſt time this was debated) all the Ways of puniſhing Crimes of this nature, are extraordinary. Perſons are condemned there, not only unheard, but they are condemned before they are accuſed, and that is thought neceſſary there, which will not be endured here: And yet that Government hath continued ſo many hundred Years, and no endeavours have been made to alter it, though ſo many noble Families have ſuffered by it; becauſe they are convinced, as to their Conſtitution, 'tis neceſſary. Anno 8 W. III. 1696.

'The next Argument is from the Precedent you are about to make; and you have been told, whatever the other Precedents have been, what you do now will be a Precedent for you and your Poſterity: And whilſt the Argument is uſed only to make you cautious, and to make you conſider well, whether it is according to your Duty to your Country to paſs this Bill, (which no doubt is the only Queſtion before you) 'tis a good Argument.

'Sir, if this Precedent ſhall appear to Poſterity to be a Precedent of an innocent Man, or a Perſon whoſe Guilt was doubted of, or one whoſe Guilt did plainly not appear, and this Bill ſhould be carried by a prevailing Party, I do agree it were a very ill Precedent: But if the Caſe be, that this Precedent will appear to Poſterity upon the Truth of the thing, to be a Precedent made of a Man notoriouſly guilty, of a Man that had deſerved this extraordinary Way of Proceeding, and this general Reſentment of the Nation, and that nothing could have hinder'd this Man from the common Juſtice of the Nation, but his having endeavoured to elude it in this Matter; and if it appears that you would not be put off ſo, but that your Indignation made an Example of this Man, I ſhall not be ſorry it ſhould appear to Poſterity; but I believe Poſterity will (as I think they ought) thank you for it.

'Sir, I do ſay for my own Particular, while I am innocent, I ſhould not think my Life in Danger to be judged by 400

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Engliſh Gentlemen, and the Peerage of England, with the Royal Aſſent: And, when I reflect, I cannot be of Opinion, that the Government could have procured a Parliament, to have paſſed a Bill of Attainder againſt my Lord Ruſſel, or Mr. Corniſh, or Mr. Colledge: I do not think all the Power of the Government could have prevailed to have done that, although they could prevail to have them condemned by the Forms of Law. And here I ſee that a great many Gentlemen have oppoſed every Step of this Bill, for fear of making an ill Precedent: Yet theſe Gentlemen do believe in their own private Conſciences, that he is guilty: And I cannot think that any innocent Perſon can be in danger by ſuch a Bill, when Gentlemen oppoſe this Bill only upon the prudential Part, though they ſtill confeſs him to be guilty.

'The Concluſion I make for myſelf is, that I am convinced in my Conſcience (which I think is ſufficient, when I act in the Capacity I now do) that Sir John Fenwick is guilty of High-Treaſon, and that there are Reaſons ſo extraordinary to ſupport this Bill of Attainder, that I do not ſee how any Perſon that is ſo convinced, can refuſe to give his Affirmative to this Bill.'

Sir Godfrey Copley's Speech againſt the Bill.

Sir Godfrey Copley: 'Sir, I am very ſenſible a great deal hath been ſaid upon this Subject, but I think there is ſomething in Duty incumbent upon every Man, eſpecially upon me, who cannot concur with the general Senſe of the Houſe, to give my Reaſons for my Diſagreement; and I will make uſe of no Arguments, but ſuch as I cannot anſwer myſelf. A great deal hath been ſaid upon this Debate by Gentlemen learned in the Law; and many of theſe, though they have ſaid they would not ſpeak againſt the Power of Parliaments, yet the greateſt Part of their Arguments have touched upon your Method of Proceedings; and to ſhew you how they interfere with the Rules of Weſtminſter-Hall: So great is the force of Cuſtom and Education! But I acknowledge ſome have brought us Arguments quite of another Strain.

'I take the Puniſhment of Offenders to be one of the neceſſary Supports of all Governments; and all Societies of Men have laid down to themſelves ſome Rules, by which they judge whether Perſons accuſed are innocent or guilty: Therefore, in a Matter of this extraordinary Importance, it is proper to conſider what Rules we have to go by.

It is the Cuſtom and Law of our Nation, to require two poſitive Witneſſes to prove Treaſon; and though, I think, without the utmoſt neceſſity it is not prudent to deviate from that Rule, yet I will not argue from thence that we are tied up to it: No, it is moſt certain on the other hand, that the Legiſlative Authority, which hath Power, if they think good

good, to abrogate all Laws now in being, cannot be tied up to any Rules of human Preſcription. But Sir, there are the eternal Rules of Equity, and Juſtice, and right Reaſon, and Conſcience; and theſe I think are unalterable and never to be ſwerved from: And therefore I ſhall take the liberty to ſee how far agreeable our Proceedings are to theſe Rules. Anno 8 W. III. 1696.

'Sir, I look upon it as a fundamental Breach of thoſe Rules, for an Accuſation to be given in againſt any Man behind his Back, by he knows not whom, or by any with whom he is not confronted, and brought Face to Face.

'I am one of thoſe that look upon Sir John Fenwick to be guilty, and there is a Proof of it by one Witneſs; and to this you have added an Indictment that is proved. Now I muſt needs own, that I think that to be ſo far from giving any Credit or Strength to the Evidence, that in my Opinion the Injuſtice which attends it, makes the Scales lighter than they were before; for if any Bill or Writing ſworn behind a Man's Back, may be uſed as part of Evidence, I do by parallel Reaſon argue, that the like may make up the whole at one time or other; and then the Information of any two profligate Knaves before a Secretary of State, or a Juſtice of Peace, ſhall be ſufficient, without any living Teſtimony, to make a Man run the Hazard of his Life.

'Then Sir, I am not at all convinced of the neceſſity of this Proceeding: I muſt confeſs, that thoſe that brought this Matter before us, are much wiſer than I, and therefore I will not examine what reaſon they had to do it; but it is ſo little agreeable to me, I wiſh it had not come here. But is it to be ſuppoſed that your Government is in hazard by any Man that is faſt in Newgate? Can any Man think, that Sir John Fenwick can do any thing in his Condition, to hazard it? Can you expect that a Man that hath been ſix Months in Priſon, and no body came at him, that he may make ſuch a Diſcovery as may be worth your while? But ſuppoſe you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to ſave himſelf, may not he form ſuch a Plot, as (ſhould it gain Belief) might make the beſt Subject in England tremble?

''Tis not Sir John Fenwick's Life which I argue for; I do not think it of ſo great Value, to deſerve ſo long and ſolemn a Debate in this Houſe, nor the Conſideration of ſo great an Aſſembly after this manner. But I do ſay, if this Method of Proceeding be warranted by an Engliſh Parliament, there is an end to the Defence of any Man living, be he never ſo innocent.

'Sir, I remember I heard it mentioned on the other ſide of the Way, by an honourable Perſon, who never lets any

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Argument want its weight, that King James attainted a great Number of Perſons in a Catalogue, in a lump. Sir, I am not afraid of what arbitrary Princes do, nor an Iriſh Parliament; but I am afraid of what ſhall be done here: I am concerned for the Honour of your Proceedings, that it may be a Precedent to a future Parliament, in an ill Reign, to do that which, I am ſatisfied, you would not do. I had ſome other Thoughts, which I cannot recollect, though theſe Reaſons are ſufficient to convince me.'

Members for and againſt the Bill.

The other Members who ſpoke for the Bill, were Mr. Montague, my Lord Cutts, Sir William Strickland, Sir Herbert Croſts, Mr. Vernon, Mr. Smith, Mr. Boſcawen, Mr. Cowper, Mr. Sloan, Col. Wharton: Thoſe who ſpoke againſt the Bill, were Sir Charles Carteret, Mr. Manley, Mr. Dolben, Sir Edward Seymour, Sir Robert Cotton, Lord Norreys, Mr. Hammond, Mr. Bromley, Mr. Harcourt, Sir Richard Temple, Mr. Paget, Mr. Jefferies, Mr. Edward Harley. After the Arguments had been offered on both ſides, the Queſtion was put for paſſing the Bill; whereupon the Houſe divided, and it was carried in the Affirmative by 189 Voices againſt 156, and ſent up to the Lords by Mr. Norris.

The Bill carry'd.

The 27th, a Motion being made for a Time, when the Houſe ſhould *Reſolve* itſelf into a Committee *on the Grievances of the Kingdom*, an Amendment was offer'd to it, by inſerting the Words *State of the Nation*, inſtead of *Grievances*, and carry'd in the Affirmative, Yeas 137, Noes 113.

The ſame day, the Houſe being principally taken up with the Article of *Ways and Means*, we ſhall here inſert an Abſtract of the principal Proceedings on that Head during this Seſſion.

Proceedings on Ways and Means.

The Ways and Means of raiſing this Supply were, firſt, *a general Capitation or Poll-Tax*: Secondly, *a Tax of three Shillings in the Pound upon Land*: And thirdly, a Duty *upon all Paper, Paſte-board, Vellum and Parchment, imported or made in this Kingdom.*

But ſtill the greateſt Difficulty of all, was the Loſs of Public Credit: For the Tallies ſtruck, or Funds ſettled by Parliament, eſpecially ſuch as were remote, were exchanged for ready Money, at a mighty Loſs: And the Government was obliged to make exceſſive Diſcounts and Allowances to bring Treaſure into the Exchequer. This great Loſs of Credit, which was like to prove fatal to our Affairs abroad the laſt Summer, aroſe chiefly from two things, Firſt, the Deficiencies of Parliamentary Funds, particularly the unhappy Project of the Land-Bank, which proved wholly abortive, and did not produce one Penny of above two Millions and a Half with which it was charged: Secondly, the Re-

coining

coining of our Silver. The firſt created Truſt, and the latter deſtroyed it, by making Money to be very ſcarce. 'Tis eaſy to imagine what periſhing Circumſtances the Nation was in, when the Notes of the Bank of England, which had been a mighty Help to the Public, were diſcounted at twenty, and Tallies at forty, fifty, or ſixty *per Cent.* The Government had contracted a great Debt; ſome Funds were wholly taken away, and the reſt proved deficient; great Numbers of Tallies were on Funds very remote, and many had no Funds at all. Hereby the Truſt and good Opinion of the People were ſo far loſt, that thoſe few who had any Money to lend, ſhewed the greateſt Backwardneſs imaginable to bring it into the Exchequer, when they could Stock-job it to ſo great Advantage upon the Royal-Exchange; and therefore all Loans to the Government were procured on exorbitant *Præmiums.* Anno 8 W. III. 1696.

All Men were amazed and confounded at this Obſtruction to Trade and Credit, and hardly believed that the Wit of Man was able to find out an Expedient, that could be effectual to retrieve ſo great a Miſchief. The Nation is the more obliged to the Wiſdom, Sagacity, and Eloquence of Mr. Montague, Chancellor of the Exchequer, who animated the whole Deſign, and projected the moſt likely Methods to bring it to a happy Effect. The 25th, the Commons had *Reſolv'd, That a Supply be granted to his Majeſty to make good the Deficiencies of Parliamentary Funds*; and afterwards ordered an Eſtimate to be laid before them, of what Sums were, or would be wanting to ſatisfy and diſcharge all Principal and Intereſt due, or to become due on the ſeveral Aids, Duties, or Funds, over and above all Arrears, ſtanding out upon them which were determined; and beſides all Moneys to be raiſed by ſuch as were then unexpired. And the * Computation of all the particular Sums that were wanting to make good all the deficient Funds, being made, the Whole amounted to five Millions, one hundred and ſixty thouſand,

* *About this Time Mr. Chancellor of the Exchequer preſented to the Houſe, an Eſtimate of what the Funds to be continued, produce yearly, clear of all Charges,* viz.

	On a Medium of three Years.		
	l.	*s.*	*d.*
The Subſidies of Tonnage and Poundage	375,967	0	0
Impoſition on Wine and Vinegar	139,621	0	0
Ditto on Tobacco	128,380	0	0
On Eaſt-India Goods	149,754	0	0
Additional Impoſts on Merchandizes	49,820	0	0
Duties on Paper, and Parchment	50,000	0	0
Marriages, Births, and Burials	50,000	0	0
Windows	100,000	0	0
	l. 1,043,542	0	0

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thouſand, four hundred Pounds. Having now got to the Bottom of the Diſeaſe, they *Reſolved* on a thorough Cure. For being ſenſible, that had ſome Deficiencies been taken care of, and others neglected, Public Credit muſt have continued lame, and the Government have halted, if it had not fallen to the ground; they judged it of abſolute neceſſity to make Proviſion for the whole; that ſo there ſhould remain no Tally without a Fund, nor any Tally on a deficient Fund, but what in its Courſe of Payment ſhould be ſatisfied and diſcharged. In order to this, they continued divers Duties ariſing not only by the Cuſtoms, but by continued and additional Impoſitions; Paper and Parchment, Births, Marriages, and Burials, Windows, the Subſidy of Tonnage and Poundage, after the Day on which they would otherwiſe have expired, to the firſt day of Auguſt, 1706. And appointed all the Moneys which ſhould ariſe, and be brought into his Majeſty's Exchequer from any of theſe Taxes or Duties, from the Day on which they were otherwiſe to expire, to the ſaid firſt Day of Auguſt, 1706, to be the general Fund for making good all the deficient ones, by the Satisfaction and Payment of the Principal and Intereſt due, or become due thereupon. And that all Occaſion of Complaint might be removed, and equal Proviſion made for all, the Parliament directed that all Moneys ariſing from the Duties, ſo as before continued and appropriated for the general Fund, ſhould be diſtributed and applied to pay Principal and Intereſt upon every one of the deficient Funds, in proportion to the Sum of which they were deficient; and that all the Money which ſhould be in ſuch a due Proportion diſtributed, or placed to the Account of each deficient Tax or Fund, for the Diſcharge of Principal and Intereſt, ſhould be paid out to all who were entitled to receive the ſame, in ſuch Courſe and Order, as if the ſame were Moneys really ariſing by the reſpective deficient Funds, and that without being diverted, miſapplied, or poſtponed; and made the Officers of his Majeſty's Treaſury liable to great Penalties, in caſe this Method were not obſerved. Moreover, to remove all Doubts about the Security intended to be given, in caſe on the firſt of Auguſt, 1706, or within three Months, then next enſuing, the whole Produce of the ſeveral Funds and Revenues appropriated for a general Fund, together with other Grants then in being, ſhould not be ſufficient to diſcharge the Sum of five Millions, one hundred and ſixty thouſand four hundred Pounds, intended to be diſcharged; that then what was deficient, ſhould be made good out of ſuch Aids or Revenues, as ſhould be granted in the next Seſſions of Parliament. Thus the Commons, by an admirable Stroke of Wiſdom, as well as a noble Act of Public Juſtice, provided a ſufficient

ſufficient Security for this great Debt that lay heavy on the Nation; which was all that could be demanded or expected, at a time when Money was not in being, and therefore not to be had. And becauſe all the Branches of Public Credit did plainly depend on, and mutually ſupport one another, the Parliament took into Conſideration, by what Means they might buoy up the Credit of the Bank of England, which was then ready to ſink. Anno 8 W. III. 1696.

In order to this, the Parliament on February 3d, agreed to augment the common capital Stock of the Bank of England, by admitting new Subſcriptions; which new Subſcriptions ſhould be made good in Tallies and Bank Notes. The proportion was four fifths of the firſt, and one fifth of the laſt, and an Intereſt of eight *per cent.* was allowed, as well for ſuch Tallies that ſhould be brought in, to enlarge their Stock by Subſcription, as for thoſe Tallies which the Company was then poſſeſſed of; provided they did not exceed the value of thoſe Bank-Notes, which ſhould be paid in upon this engraftment on their Stock; and for ſecuring the Payment of this Intereſt of eight *per cent.* The additional Duty on Salt was afterwards granted and appropriated. The time of the Continuance of the Bank of England, they thought fit to extend to the Year 1710, and reſolved likewiſe, that before the day was fixed for the beginning new Subſcriptions, the old Stock be made one hundred *per cent.* and that what ſhould exceed that value, ſhould be divided among the old Members: That all the Intereſt due on thoſe Tallies which would be ſubſcribed into the Bank-Stock, at the time appointed for Subſcriptions, (to the end of the laſt preceding Quarter, on each Tally) be allowed as Principal. That Liberty be given by Parliament to enlarge the Number of Bank-Bills, to the value of the Sum which ſhould be ſo ſubſcribed, over and above the 1,200,000 l. provided they be obliged to anſwer ſuch Bills at demand; and in default thereof, to be anſwered by the Exchequer out of the firſt Money due to them. That no other Bank be erected, permitted, or allowed by Act of Parliament, within this Kingdom, during the Continuance of the Bank of England. That on ſuch new Settlement, the Bank of England be exempted from all manner of Parliamentary Taxes. That no Act of the Corporation ſhould forfeit the particular Intereſt of any Perſon concerned therein. That Proviſion be made for the effectual preventing the Officers of the Exchequer, and all other Officers and Receivers of the Revenue, from diverting, delaying, or obſtructing the Courſe of Payments to the Bank. That care be taken to prevent the abetting, counterfeiting, or forging any Bank-Bills or Notes; as likewiſe againſt the defacing, raiſing, or altering any Indorſement upon any ſuch Bill

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Bill or Note. That the Eſtate and Intereſt of each Member in the Stock of the Corporation, be made a perſonal Eſtate. And laſtly, that no Contract or Agreement made for any Bank-Stock to be bought or ſold, be valid in Law or Equity, unleſs the ſaid Contract be actually regiſtred in the Books of the Bank within ſeven Days, and actually transferred within fourteen days next after the making ſuch Contract. Upon which Encouragements, a Million was ſubſcribed and paid in Tallies and Bank-Notes, as the Parliament had directed. This Expedient was the Reſult of Mr. Charles Montague's Skill and Prudence, and tho' many Perſons who were intereſted in it, could not preſently apprehend the Reaſonableneſs of it, yet the Advantages they afterwards received, did fully convince them, that no other way could have been found to call back their ſinking Credit: For the Value of two hundred thouſand Pounds in Bank-Notes being ſunk by the new Subſcription, the reſt, as it was reaſonable to believe they would, began preſently to riſe in worth; and ſo likewiſe did the Tallies, after ſo many as amounted to eight hundred thouſand Pounds were paid in to enlarge the Bank. Upon this the Credit of the Bank recovered apace, till in a ſhort time their Notes, which bore no Intereſt, were equal with Money, and their Bills that bore Intereſt better than Money: And by this means the Face of Affairs was quickly much changed for the better; Credit began to revive, and Money to circulate on moderate terms; foreign Affairs were leſs to our diſadvantage, and ſoon after came to an equality: And whatever hardſhips the People had undergone, by reaſon of a long and expenſive War, and the recoining the Silver-Money, which could not but occaſion many Complaints, yet the greateſt part attributed this to the Neceſſity of Affairs, and began to hope, both from the Proſpect of a Peace, and the Wiſdom of thoſe at the Helm, that they ſhould enjoy more favourable Times.

Want of Money in ſpecie.

Another Evil of no leſs Difficulty or Importance than the loſs of Credit, (and which, as was hinted before, was one of the Springs of the latter) remained ſtill to be removed; and that was the great Scarcity of Money. The Parliament, to prevent diſappointments, by ſettling Funds which might be deficient, came to a Reſolution on November 20th, That the Supplies for the Service of the Year 1697, ſhould be raiſed within the Year. But how could above five Millions be raiſed within the Year, while the Silver-Money was called in, and recoining, and there was not current Coin enough in the Nation, to anſwer the Occaſions of Trade, and ſcarcely the Conveniencies and Neceſſities of Life? This Vote of Parliament ſeemed impracticable; the Enemies of the Government made themſelves merry with it, and inſtead

ſtead of raiſing their Spleen, 'twas the Entertainment of their pleaſant Humour: And many, even of the beſt Friends of the Government, imagined that the Parliament by this, rather expreſſed their Zeal and Willingneſs, than their Ability to ſupport the State, and maintain the preſent Settlement. But this Parliament, for whoſe Wiſdom it was reſerved to ſurmount Difficulties, that were looked on as invincible, made Money without Bullion, and diſtributed great quantities of Coin without the help of the Mint. This they did by authorizing the Lords of the Treaſury, to iſſue out Bills from the Exchequer, to the value, firſt and laſt, of above two Millions; which Bills were firſt appointed to be brought in, and ſunk upon the Capitation-Tax. But before the Seſſion ended, the Parliament being convinced by the firſt Collection of that Duty, that it would prove very deficient; they appointed the ExchequerBills to be brought in, on any other of the King's Duties or Revenues, excepting the Land-Tax; and allowed an Intereſt of ſeven Pounds twelve Shillings *per annum*, upon the ſecond iſſuing the ſaid Bills out of the Exchequer, whereas at firſt they bore no Intereſt. By this the Parliament laid a good Foundation for Paper-Money to ſupply the Place of our Silver-Coin; for ſo many Payments were at this time to be made into the Exchequer, that when the People had aſſurance given them, that the Exchequer-Notes ſhould be received back again in Payment of the King's Taxes, they were very well ſatisfied to take them, at firſt indeed at a ſmall Diſcount, but not long after at an equality. A great Number of theſe Notes were only for five or ten Pounds, which anſwered the Neceſſity of Commerce among the meaner People, for the common Conveniencies of Life. And that thoſe who had advanced Money on Loans on any Part of the King's Revenues, might not be obliged to receive it back in Notes that were under the Value of Money, to ſtrengthen the Reputation of theſe Bills, the Parliament authoriſed the Lords of the Treaſury, to contract with any Corporation, or Numbers of private Men, and to allow them a competent *Præmium*, provided they obliged themſelves to exchange thoſe Notes for Ready Money, when tendred to them for that purpoſe; which the Lords of the Treaſury did accordingly. The Credit of the Exchequer Notes being thus ſecured, they daily roſe nearer to *par*, till at laſt they exceeded the Value of Money: And whereas the Truſtees, with whom the Government had contracted to exchange them, were at firſt allowed ten *per cent.* as a *Præmium*, they were ſince contented to do it for four. Theſe Bills paſſed as ſo many Counters, which the People were ſatisfied to receive, becauſe they knew the Exchequer would receive them again as ſo much ready Money: And theſe State-Counters ſo well

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ſupplied the want of Money, till new Coin was iſſued from the Mint, that Trade and Commerce were maintained, and mutual Payments well enough made, to anſwer the Neceſſities of the Government and the People. This Project (which proved an effectual, tho' a Paper-prop to ſupport the State, when its Silver-Pillars, if I may ſo ſpeak, were for a time removed) was likewiſe owing to the Prudence and Induſtry of Mr. Charles Montague, as well as that of re-coining the Money; which thoſe very Men who envied moſt his Succeſs in the Houſe of Commons, and growing Power at Court, were afterwards contented to call a fortunate Temerity.

Royal Aſſent given to ſeveral Acts.

December 3. His Majeſty gave the Royal Aſſent to the following Bills, *viz.* *An Act for importing and coining Guineas and Half-Guineas.* *An Act for explaining an Act relative to the Duties on Low Wines, and Spirits of the firſt Extraction.* *And an Act for the further remedying the ill State of the Coin.*

Copies of Grants from the Crown read.

The ſame Day the Copies of the Docquets of Grants of Crown-Lands, and Sums of Money for the Year 1696, were read, and are in Subſtance as follow.

A Revenue of 300 l. *per Annum* to Samuel Johnſon Clerk, out of the Letter-Office, (*vid.* Tome II. p. 334.)

A Grant of certain Buildings in White-Hall for 45 Years at the Rent of 6 s. 8 d to the Earl of Portland.

A Warrant to the Exchequer for an Annuity of 400 l. to be paid quarterly to Sir R. Killigrew.

A Grant to the Earl of Rochford, of all the Meſſuages, and Tenements belonging to Powis-Houſe, (the Houſe itſelf was excepted) divers Meſſuages and Lands in the Pariſh of Hendon, together with the Rectory and Advowſon of the ſaid Pariſh; at the yearly Rent of 13 s. 4 d. Likewiſe all Arrears and Meſne Profits ariſen and payable out of the late Marquiſs of Powis's Eſtates in the Counties of Northampton and Montgomery, now about to be paſs'd to the ſaid Earl; likewiſe all Bonds, Mortgages, Debts, Sums of Money, Goods, and Chattels, and other the perſonal Eſtate belonging to the late Marquiſs, and forfeited by reaſon of the High-Treaſon by him committed.

A Grant to William Saunderſon Eſq; of 25 Load of Hay, and 50 Quarters of Oats reſerved on two Leaſes from the Crown, of certain Lands and Tenements in Eaſt-Greenwich.

A Grant to the Earl of Portland of the Mannor of Grantham, the Honour of Penrith, the Mannor of Drachlow and Radheath, the Mannor of Torrington, the Mannor of Pratington, Briſtolgarth, Hornſey, Thurry, Barnſley, and Leven, all part of the Ancient Revenue of the Crown of England: And of the Mannor of Pevenſey, parcel of the Dutchy of Lancaſter, together with the Mannor of Eaſt-Greenwich,

Greenwich, to have and to hold for ever, at the yearly Rent of 13 s. 4 d. Anno 8 W. III. 1696.

A Grant to Colonel Edward Leigh of 500 l. bequeathed by his Sister to Edward Lord Griffin outlaw'd for High-Treason.

A Grant to Charles Bertie, Samuel Travers, James Herbert, and Richard Powis Esqs; of Nercomb Farm, a Tenement in King-Street, Deptford, a Ditch or Piece of Ground there, a Close called West-Bromfield, together with certain other Lands in Deptford aforesaid. The Rents of Assize in East-Peckham, Rents of Assize in East-Farleigh; likewise the Treasury-Rents there; all in Kent: The Manors of East-Molsey, Hampton-Court Ferries, the Fisheries there, Richmond-Ferry, three Tenements call'd the King's-Bench, the Crane, and the Pike-Garden, in Southwark; the Scite of the Monastery of East-Sheen, all in Surry: The Lands called Northley, and Bernard's Castle; likewise Oldbury and Seabeth in Sussex: Compthill-Park in Bedfordshire: Certain Lands in Shotover and Stowood, and certain other Lands in Oxfordshire: The Manor and Park of Marybone; a third part of the Demesnes of the Forest of Gillingham in Dorsetshire: The Herbage, &c. of the Forest of Mara, in the Manor of Macclesfield: The Bailywick of the Hundred of Northwich: The Fraternity of Ively in Cheshire, the Tythes of the Vicarage of Hallifax, with their Appurtenances, to have and to hold from the Decease of Katherine now Queen Dowager of England, at the Yearly Rent of 3 l. 13 s. 4 d. ½ for 35 Years.

A Grant to Alexander Johnson Esq; of an Annuity of 300 l. chargeable upon several Manors, &c. forfeited by Sir Roger Strickland, for eight Years.

A Grant to Lord Raby of all Fines, called Port-Fines, to be levied in the Court of Common-Pleas, for the Term of 48 Years at the Yearly Rent of 2276 l.

A Grant to John Agar Esq; at the Nomination and Desire of Arthur Earl of Torrington, of the House and Scite of Oatlands in Surry; together with certain Chambers in Serjeants-Inn, forfeited by the Attainder and Outlawry of Sir Edward Herbert, as likewise of his Majesty's Manors of Greenwich at the Yearly Rent of 13 s. 4 d.

A Grant to the Lord Cutts of the Hundred of Durnford, and other Manors, Castles, Towns, Rectories, Advowsons, Goods, Debts, Chattels, &c. forfeited by the Outlawry of John Caryll Esq; at the Yearly Rent of 13 s. 4 d.

A Grant to Thomas Hall Esq; of St. James's Market with its Appurtenances, for 99 Years, to commence at the Expiration of a Term (of 44 Years, which was then to come,) granted to the late Earl of St. Albans.

A Certificate was then read of the vacating a Grant by Tally of 24,571 l. 5 s. 4 d. as of his Majesty's free Gift and

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Royal Bounty, to the Earl of Portland, but not received, at the Deſire of the ſaid Earl.

Arrears due to the Navy, Army, &c.

The ſame day likewiſe, by the Accounts preſented to the Houſe, it appeared that the Arrears due to the Navy amounted to ——— l. 421,079 17 9
To the Army ——— 1,850,197 13 0¾
To the Ordnance ——— 58,321 1 9
For Tranſports ——— *439,544 00 0

Total *L.* 279,142 12 6¼

Several Amendments to the Bill *for the further regulating Elections*, being then made, a Motion was made, that the ſaid Bill with the Amendments be engroſſed, and paſſed in the Affirmative, Yeas 183, Noes 157.

Bank Account.

The 4th, the Governour and Company of the Bank, attended with their Account Current, which was as follows.

	l.	s.	d.
Debtor to ſundry Perſons for ſealed Bank-Bills ſtanding out ———	893,800	00	00
To *Ditto*, on Notes for Running-Caſh ———	764,196	10	06
To Moneys borrowed in Holland ———	300,000	00	00
To Intereſt due upon Bank-Bills ſtanding out ———	17,876	00	00
Balance	125,315	02	11
	2,101,187	13	05
Creditor by Tallies on ſeveral Parliamentary Funds ———	1,784,576	16	05
By ½ Year's Deficiency of the Fund of 100,000 l. *per Ann.* in the 2d Year —	50,000	00	00
By Mortgages, Pawns, Caſh, *&c.* ———	266,610	17	00
	2,101,187	13	05

The 5th, by the Report of the Committee appointed to inſpect the Mint, that from Jan. 1, 169⅝. to Nov. 30, 1696.

Account of Money coined.

	l.	s.	d.
The whole Coinage in the Tower amounted in Tale to about ———	2,370,000	00	00
Of which had been paid in to the Exchequer ———	2,173,000	00	00

* *This Article being afterwards examined by the Commiſſioners for ſtating the Deficiencies of Parliamentary Funds, was reduced to* 330,255 *l.* 05. 3 *farthings.*

To

To Importers of Ingots		l. 55,000 00 00	Anno 8 W. III. 1696.
To Importers of Plate		66,000 00 00	
Coin'd at the several Country Mints	York	30,000	
	Briſtol	30,000	
	Exeter	28,000	
	Norwich	15,000	
	Cheſter	7000	

The 8th, the Committee appointed to examine the Petition of one Mary Greibe, made their Report; by which it appeared that Conrade Greibe, Husband of the ſaid Mary Greibe, having undertaken to deliver two Petitions in behalf of certain Officers and Soldiers turn'd out of Count Stanbock's Regiment, to the King and Parliament, was the Day before ſeiz'd by one Kitſon, a Meſſenger, by Warrant from Mr. Secretary Trumball, charging him with treaſonable Practices. That he was kept in the ſaid Meſſenger's hands ten Days; during which time, he had been oftentimes refus'd an Examination: And that at laſt about two or three o'clock in the Morning he was taken out of the Cuſtody of the ſaid Meſſenger by a Party of the Dutch Guards, who carry'd him on board a Dutch Veſſel, from whence he was convey'd to Bruſſels, where he was thrown into a Dungeon, and is ſubſiſted on Bread and Water only. Caſe of Conrade Greibe.

Reſolved, That an humble Addreſs be preſented to his Majeſty, that he will be pleaſed to cauſe the Informations in relation to Conrade Greibe, to be laid before the Houſe; to which his Majeſty by Meſſage, the 23d, return'd the following Anſwer. Addreſs thereon.

'W. R.

'His Majeſty having receiv'd an Addreſs from the Houſe, 'whereby it was deſir'd that he would pleaſe to cauſe the 'Informations, in relation to Conrade Greibe, to be laid 'before the Houſe, is pleas'd to acquaint them, that upon 'the Diſcovery of the late Conſpiracy againſt his Perſon 'and Government, the ſaid Greibe was taken into Cuſtody 'among other ſuſpected Perſons, as concerned in that Plot; 'and about the ſame time, ſeveral Informations being ſent 'and delivered to his Majeſty, whereby he appeared to be 'a very dangerous Perſon; his Majeſty thought it for his 'Safety not to ſuffer him, being an Alien, to continue longer 'in this Kingdom; and did order the Duke of Wirtemberg, who was then going for Flanders, to tranſport him 'thither, in order to ſend him to the Elector of Brandenburg, his natural Prince, which was done accordingly; 'and the ſaid Greibe was deliver'd to the General of the 'ſaid Elector, who was by him appointed to receive him, 'together with the Informations.' King's Anſwer.

The

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Enquiry into the Conduct of the Fleet ends in a Motion for Candles.

The 9th, the Houſe took into Conſideration, according to Order, the Books and Papers laid before the Houſe, relating to the Fleet; and enter'd upon Enquiries how it came to paſs, that the French Toulon Squadron was not intercepted when going into Breſt: Upon which Vice-Admiral Mitchel having been examin'd, and ſeveral Letters to and from Admiral Ruſſel having been read, a Motion was made, that Candles ſhould be brought in, which paſs'd in the Negative, Yeas 128, Noes 150. Upon which, the Houſe adjourn'd.

A Clauſe to render Merchants eligible, as Members of Parliament, being worth 5000l.

The 20th, the engroſſed Bill for further regulating Elections being read the third time, an engroſſed Proviſo was offer'd and agreed to, to render any Merchant, being a natural-born Subject of England, eligible, on his making Oath, that he is worth 5000 l. in real and perſonal Eſtate: But no Perſon to be eſteemed a Merchant, for having Money in the Bank, or any other Company.

The Queſtion being then put, that the Bill do paſs, it paſſed in the Affirmative, Yeas 200, Noes 160.

Report of the Committee upon the Abuſes of Priſons.

The 30th, Mr. Pocklington, from the Committee on the Abuſes of Priſons, *&c.* among a Variety of other Matter, reported to the Houſe, that one Brunskill a Sollicitor, had inform'd the ſaid Committee, that Tilly (who had lately procured an Act of Parliament to enable Bromſhall, an Infant, to ſell his Intereſt in the Fleet-Priſon; which he, Tilly, had purchas'd) as he was informed, ſhould ſay, That he obtain'd that Act by Bribery and Corruption.

That one Mrs. Hancock applying to Tilly not to protect one Guy, being his Clerk of the Papers, becauſe he was perjured, *&c.* Tilly refuſed her Requeſt: Upon which, being ask'd how he would do, if the Matter ſhould be laid before Parliament? he reply'd, he could do what he would there; that they were a Company of bribed Villains; that, to his knowledge, they would all take Bribes; and that it coſt him 300 l. for his Share, and 300 l. for the other Shop (meaning the King's-Bench) for bribing a Committee laſt Parliament.

That ſhe then, intimating that ſhe muſt then apply to the Houſe of Lords; he anſwered, it was only palming 5 or 6 talking Lords, and they would quaſh all the reſt. And ſhe then ſaid, ſhe would try the King and Council; he added, the beſt of the Lord-Keeper's Fees were from him: That as to the Judges, they were all ſuch a Parcel of Rogues, that they would ſwallow his Gold faſter than he would give it them; and that as to the Members of the Houſe of Commons, they were many of them Members of his Houſe.

That

That ſeveral other Perſons had charg'd him with other Particulars of the like nature. Anno 8 W. III. 1697.

And that the ſaid Tilly, to invalidate their Teſtimony, had inſiſted they were Perſons of bad Character, and in a Confederacy againſt him, *&c.*

Order'd, That John Tilly Eſq; be taken into the Cuſtody of the Serjeant at Arms.

Jan. 5th, the ſaid Mr. Pocklington from the ſaid Committee likewiſe reported, that it was prov'd to them by two Witneſſes that one Francis Duncomb had likewiſe reported, that he had diſtributed Money to ſeveral Members.

Order'd, That the ſaid Francis Duncomb be taken into the Cuſtody of the Serjeant at Arms.

Jan. 11th, His Majeſty came to the Houſe of Peers, and gave the Royal Aſſent to Royal Aſſent given to ſeveral Acts.

An Act *to attaint Sir John Fenwick, Baronet, of High-Treaſon.*

An Act *to attaint ſuch of the Perſons concerned in the late horrid Conſpiracy, to aſſaſſinate his Majeſty's Royal Perſon, who are fled from Juſtice, unleſs they render themſelves to Juſtice; and for continuing ſeveral others of the ſaid Conſpirators in Cuſtody*: and ſeveral private Acts.

The 21ſt, a tumultuous Croud of People filling all the Paſſages to the Houſe, and clamouring to have the Bill paſſed for reſtraining the Wear of Eaſt-India Silks; Orders were given to the Juſtices to diſperſe them: and it was reſolved, That the inciting and encouraging any Number of Perſons to come in a riotous manner, either to hinder or promote the paſſing any Bill depending before this Houſe, being againſt the Conſtitution and Freedom of Parliament, is a high Crime and Miſdemeanour. Orders for diſperſing a Mob.

The 27th, a Motion being made for reading the Report deliver'd in by the Committee on the Abuſes of Priſons, it paſs'd in the Affirmative, Yeas 152, Noes 107. Farther Proceedings on the Report concerning the Abuſe of Priſons.

Accordingly, the ſaid Report was read, and Mr. Tilly being brought to the Bar to make his Defence, he deſir'd further time, and the Houſe proceeded to take further Informations; on which occaſion ſeveral Witneſſes added yet farther Particulars to his Charge, and ſeveral endeavoured to prove that he was innocent of all: and that as it had been before urg'd, thoſe who accus'd him were prejudiced Perſons, and had enter'd into a Conſpiracy againſt him; of which many Inſtances were enumerated before the Houſe.

The whole Affair ended in ordering the ſaid Report to be delivered to the Attorney-General and Solicitor-General, and that they do take care to proſecute the Perſons concerned for the Crimes therein mentioned.

Anno 8 W. III. 1697.

As likewiſe, that one Robert Markham, who was convicted of having ſpoke ſcandalous Words of the Houſe, ſhould for the ſaid Offence be taken into the Cuſtody of the Serjeant at Arms.

The 28th, the Committee appointed to examine ſeveral Petitions relating to the Newfoundland Trade, having made their Reports, the Houſe agreed with the ſaid Committee to the following Reſolutions:

Votes relating to the Newfoundland Trade.

'That the Trade to Newfoundland doth very much promote Navigation, increaſe Seamen, and is of great Profit to this Nation, and of Advantage to us in the Balance of Trade.

'That the great Loſſes ſuſtain'd in the Newfoundland Trade were occaſioned thro' Want of a ſufficient Number of Men of War, to ſecure its Harbours, and to protect the Fiſhery.

'That an humble Addreſs be preſented to his Majeſty, that a competent Number of Men of War and Land-Forces be ſent as ſoon as conveniently may be to regain the loſt Harbours in Newfoundland, to cruize on that Coaſt, to guard the Fiſhery, and annoy the Enemy trading to thoſe Parts.'

Royal Aſſent given to ſeveral Acts.

The ſame day the King gave the Royal Aſſent to an Act, *for granting an Aid, as well by Land-Tax, as ſeveral Subſidies*, &c. and to two private Bills.

A Minute, which was ordered not to be printed.

The 29th, the Committee appointed to make Enquiry into the Cauſes of the late Tumults, having made their Reports, a Motion was made, and the Queſtion put, That Gabriel Glover, for ſpeaking ſcandalous Words of this Houſe and their Proceedings, be taken into the Cuſtody of the Serjeant at Arms; it paſs'd in the Negative.

Order'd, That the ſaid Queſtion be not printed.

The next Buſineſs of Importance was to retrieve and maintain the publick Credit; and to ſupply the Want of Money by the Currency of Exchequer-Bills, and to ſupport the Bank of England: The Commons were ſo intent upon theſe wiſe Ends, that when in a Paper, entitled the Flying-Poſt, publiſhed on Thurſday April the 1ſt, there was this Advertiſement: *We hear, that when the Exchequer-Notes are given out upon the Capitation-Fund, whoſoever ſhall deſire Specie on them, will have it at five Pound and a half* per Cent. *of the Society of Gentlemen that have ſubſcribed to advance ſome hundred thouſands of Pounds*: They voted this Paſſage to be a malicious Inſinuation, in order to deſtroy the Credit and Currency of the Exchequer-Bills. They ordered the Printer, John Salisbury, to be ſent for in Cuſtody: And gave leave to bring in a Bill, to prevent the Writing, Printing, or Publiſhing any News without Licence. And yet when

The Printer of the Flying-Poſt order'd into Cuſtody.

ſuch

ſuch a Bill was preſented by Mr. Pulteney, it was thrown out before a ſecond Reading; becauſe tho' they ſaw the Miſchiefs of the Liberty of the Preſs, they knew not where to fix the Power of Reſtraint. Anno 9 W. III. 1697. A Bill to reſtrain the Preſs rejected.

An Act *for a farther Impoſition on Coals, for finiſhing and adorning the Cathedral of St. Paul's, for preventing Abuſes in Priſons and pretended privileged Places*, and *to reſtrain the Numbers and ill Practices of Brokers and Stock-Jobbers*, put an end to the Buſineſs of this Seſſion.

And on April 16th, His Majeſty came to the Houſe of Lords, when, after having given the Royal Aſſent to ſeveral Bills, he made this Speech to both Houſes.

'My Lords and Gentlemen,

'HAving given my Aſſent to the ſeveral Bills you have preſented to me, I am now to return you my hearty Thanks for what you have done this Seſſion; which has been carried on with great Prudence, Temper, and Affection. King's Speech.

'At the Opening of the Seſſion, I told you how ſenſible I was of the Difficulties to be ſtruggled with, which were of ſuch a nature, that, I will freely own, the Hopes I had of our being able to overcome them, were founded only upon the Wiſdom and Zeal of ſo good a Parliament.

'My Expectation has been fully anſwered; you entered upon the Buſineſs with ſo much Chearfulneſs, proceeded ſo unanimouſly, and have at laſt brought things to ſuch a Concluſion, that we may hope to carry on the War with Succeſs, in caſe our Enemies do not think it their Intereſt to agree to an honourable Peace: And ſo effectual a Proviſion being made for ſupplying the Deficiencies of former Funds, (which is the beſt Foundation for re-eſtabliſhing of Credit) I doubt not but in a ſhort time it will have a very happy Effect, to the univerſal Eaſe and Satisfaction of my People.

'The Circumſtances of Affairs making it neceſſary for me to be out of the Kingdom for ſome time, I ſhall take care to leave the Adminiſtration of the Government, during my Abſence, in the hands of ſuch Perſons as I can depend upon.

'My Lords and Gentlemen,

'I have nothing more to ask of you, but that you would carry down the ſame good Diſpoſition into your ſeveral Countries, which you have expreſſed in all the Proceedings of this Seſſion.'

Anno 9 W. III. 1697.

And then the Parliament was, by his Majeſty's Command prorogued.

The 3d Seſſion of the 3d Parliament.

On Friday December 3, the Parliament met at Weſtminſter, and the King in his Robes made this Speech to the two Houſes.

King's Speech to both Houſes.

'My Lords and Gentlemen,

'THE War which I entered into by the Advice of my People, is by the Bleſſing of God, and their zealous and affectionate Aſſiſtance, brought to the End we all propoſed, an honourable Peace; which I was willing to conclude, not ſo much to eaſe my ſelf from the Trouble or Hazard, as to free the Kingdom from the continuing Burthen of an expenſive War.

'I am heartily ſorry, my Subjects will not at firſt find all that Relief from the Peace, which I could wiſh, and they may expect; but the Funds intended for the laſt Year's Service, have fallen ſhort of anſwering the Sums for which they are given; ſo that there remain conſiderable Deficiencies to be provided for.

'There's a Debt upon the Account of the Fleet and the Army. The Revenues of the Crown have been anticipated by my Conſent, for public Uſes; ſo that I am wholly deſtitute of means to ſupport the Civil Liſt; and I can never diſtruſt you'll ſuffer this to turn to my Diſadvantage, but will provide for me, during my Life, in ſuch a manner, as may be for my Honour, and for the Honour of the Government.

'Our Naval Force being increaſed to near double what it was at my Acceſſion to the Crown, the Charge of maintaining it will be proportionably augmented; and it is certainly neceſſary for the Intereſt and Reputation of England, to have always a great Strength at Sea.

'The Circumſtances of Affairs abroad are ſuch, that I think my ſelf obliged to tell you my Opinion, that, for the preſent, England cannot be ſafe without a Land-Force; and I hope we ſhall not give thoſe who mean us ill, the opportunity of effecting that, under the Notion of a Peace, which they could not bring to paſs by a War.

'I doubt not but you, Gentlemen of the Houſe of Commons, will take theſe Particulars into your Conſideration, in ſuch a manner as to provide the neceſſary Supplies, which I do very earneſtly recommend to you.

'My Lords and Gentlemen,

'That which I moſt delight to think off, and am beſt pleaſed to own, is, that I have all the Proofs of my People's Affection, that a Prince can deſire; and I take this occaſion to give them the moſt ſolemn Aſſurance, that as

'I

'I never had, ſo I never will, nor can, have any Intereſt ſeparate from theirs. Anno 9 W. III. 1697.

'I eſteem it one of the greateſt Advantages of the Peace, 'that I ſhall now have leiſure to rectify ſuch Corruptions or 'Abuſes as may have crept into any part of the Adminiſtra-'tion during the War; and effectually to diſcourage Pro-'phaneneſs and Immorality: And I ſhall employ my 'Thoughts in promoting Trade, and advancing the Hap-'pineſs and flouriſhing Eſtate of the Kingdom.

'I ſhall conclude with telling you, that as I have, with 'the Hazard of every thing, reſcued your Religion, Laws 'and Liberties, when they were in the extremeſt danger; 'ſo I ſhall place the Glory of my Reign in preſerving them 'entire, and leaving them ſo to Poſterity.'

This Speech had various Effects in the Houſe of Commons: Some thought ſome Expreſſions in it too magiſterial; others ſeemed to be offended at his Majeſty's putting them in mind of what he had done for the Nation; others again diſtruſted the great Promiſes of what he would do for them; and moſt began to be jealous of the Expreſſion, That England could not be ſafe without a Land-Force: By which they underſtood that odious thing a ſtanding Army. However, on December 9th, the Commons preſented this humble Addreſs to the King.

'We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, who have ſo frequently waited on your Majeſty with the Tender of our Aſſiſtance for carrying on the War, come now to congratulate your Majeſty upon the happy Concluſion of it, in a Peace ſo honourable and advantageous to the Nation, as ſufficiently juſtifies the Wiſdom of the Commons in adviſing, and your Majeſty's Conduct in the Proſecution of it. Commons Addreſs.

'The Proſpect of the Benefits your People will receive from this Peace, is very pleaſing. The Honour your Majeſty has reſtored to England, of holding the Balance of Europe, gives your Subjects great Content. But what your Commons are moſt affected and delighted with, is, that your Majeſty's ſacred Perſon will now be ſecure, from thoſe many and great Dangers, to which you have ſo often expoſed it for our Sakes: Nothing being ſo evident, as that your Majeſty's Return in Safety, was a Bleſſing more welcome to your People than Peace, and received with greater Demonſtrations of Joy.

'We therefore with Hearts full of Affection, Duty, and Gratitude, do aſſure your Majeſty in the Name of all the Commons of England, that this Houſe will be very ready to aſſiſt and ſupport your Majeſty, who, by putting a period

Anno 9 W. III. 1697. to the War, has confirmed us in the quiet Poſſeſſion of our Rights and Liberties, and ſo fully completed the glorious Work of our Deliverance.'

The King anſwered thus:

King's Anſwer. 'Gentlemen, Nothing that relates to the Peace pleaſes me ſo much, as the Satisfaction you have in it: And as you have aſſiſted me in the War, beyond all Expreſſion, I do not doubt, but you will be as zealous in maintaining the Peace.'

The Grievance of Standing Forces. Standing Forces, however eſtabliſhed and regulated by Law, or however neceſſary to maintain the Peace, were thought intolerable; and therefore upon entring into a Conſideration of his Majeſty's Speech, the firſt Reſolution of the Commons, was on December 11th. That all the * Land-Forces of this Kingdom, that have been raiſed ſince the 29th of September 1680, ſhall be paid and disbanded. The Arguments uſed for them. Friends of the King and his Government had argued, that the Nation was ſtill unſettled, and not quite delivered from the Fear of King James; that the Adherents to that abdicated Prince, were as bold and numerous as ever; and he himſelf ſtill protected by the French King: who, having as yet diſmiſt none of his Troops, was ſtill as formidable as before. That if our Army was entirely disbanded, the Peace which was obtained at the Expence of ſo much Blood and Treaſure, would be altogether precarious: And not only England, but all Europe lie once more at the mercy of that ambitious Monarch, an inveterate Enemy to King William, the Proteſtant Religion, and the Liberties of Chriſtendom. And againſt them. On the other hand, the Country Party, who valued themſelves upon oppoſing any Motions of the Court; the diſaffected Party, who never heartily approved the Revolution; the Commonwealth Party, who were ſecretly driving at a Change of Government into their own Scheme and Intereſt; and even many worthy Patriots, who had no worſe view than the Rights and Liberties of their Country: All, upon different Thoughts, agreed in the ſame Averſion to a ſtanding Army, and laboured to repreſent it as abſolutely deſtructive to the Conſtitution of the Engliſh Government. And it was no wonder that their Objections prevailed when they were more popular, and had this weight in them, that ſtanding Forces would want a continual Tax; and disbanding would relieve the People from the Burthen of the War, which they would never be willing to bear in a time of Peace. The King hoped that he had prevented the warmth of theſe Debates at his laſt coming over, when he had cauſed ſeveral Regiments of Horſe, Dragoons, and Fooot to be diſbanded;

* *The Army then conſiſted of 17656 Foot, and 6876 Horſe and Dragoons.*

banded; and even others to be reduced, and ſent away (moſt of them) either to Scotland or Ireland *. And therefore he reſented it as the greater Hardſhip upon him, that he muſt have no Troops remaining, but be left ſo naked and expoſed, as if the Peace were only to encourage his Enemies to ſurprize him with another War.

Commons for disbanding the Army.

The Commons however perſiſted in their Reſolutions of Disbanding; but to make it the more palatable, they paſſed a Vote, December the 13th, That it be an Inſtruction to the Committee who were to conſider of the Supply, that they ſhould likewiſe conſider of a Gratuity, to be given to ſuch Officers and Soldiers of the Engliſh Army who were or ſhould be disbanded: And, at the ſame time, ordered Mr. Hammond and Mr. Moyle to bring in a Bill, to enable Soldiers who ſhould be disbanded, to exerciſe their Trades in any Town or Corporation throughout this Kingdom. And, to provide for the Security of the Kingdom, when the Army ſhould be disbanded. On December the 17th, they appointed ſeveral Members to prepare and bring in a Bill, to regulate the Militia, and make them more uſeful. And on December the 18th, they *Reſolved*, That ten thouſand Men are neceſſary for a Summer and Winter-Guard at Sea, for the Year one thouſand ſix hundred ninety eight.

Supply took into Conſideration.

On December the 20th, the Commons took the Supply into Conſideration, and *Reſolved*, that in a juſt Senſe and Acknowledgment of what great Things his Majeſty has done for theſe Kingdoms, a Sum not exceeding ſeven hundred thouſand Pounds be granted to his Majeſty during his Life, for the Support of the Civil-Liſt.

A Civil-Liſt of 700,000 l. ſettled on the King for Life.

Royal Aſſent given to ſeveral Acts.

On Friday, Jan. 14, The King gave the Royal Aſſent to an *Act to prevent the Currency of hammer'd Money, and for Recoining it.* 2. *An Act againſt correſponding with King James and his Adherents.* 3. *An Act for impriſoning Counter, and others, for the Aſſaſſination-Plot*, &c.

Sums granted, and for what Uſes.

The ſame day, the Houſe of Commons agreed to the Reſolutions which had been taken in a grand Committee about the Supply; Firſt, That a Sum not exceeding three hundred and fifty thouſand Pounds, be granted to his Majeſty, for maintaining Guards and Garriſons for the Year 1698. Secondly, That a Supply be granted to his Majeſty, which, together with the Funds already ſettled for that Purpoſe, ſhould be ſufficient to anſwer and cancel all Exchequer-Bills, iſſued or to be iſſued, not exceeding two Millions ſeven hundred thouſand Pounds. Thirdly, That a Supply be granted to his Majeſty, for the ſpeedy paying and disbanding the Army. And then they ordered, that a Bill be brought in for reducing the Diſcount upon Exchequer-Bills, and giving them a better Currency.

On

* *The Court Language of theſe times.*

Anno 9 W. III. 1698.

On January the 18th, they came to other ſofining Reſolutions. Firſt, That upon Disbanding the Army, over and above what is due to them, there be allowed by way of Bounty, fourteen Days Subſiſtence to each Foot-Soldier and Non-Commiſſion Officer; and to each Foot-Soldier three Shillings more, in lieu of his Sword, which he is to deliver up. Secondly, That upon disbanding the Army, over and above what is due to them, there be allowed by way of Bounty, ſix days full Pay to each private Trooper and Non-Commiſſion Officer of the Horſe and Dragoons. Thirdly, That, out of the Supply to be granted to his Majeſty, the Sum of two hundred and fifty thouſand Pound be allowed upon Account, towards defraying the Charge of disbanding the private Troopers, and Centinels, and Non-Commiſſion Officers, of the Horſe, Dragoons, and Foot. Fourthly, That Proviſion be made for giving Half-pay to the Commiſſion-Officers, (his Majeſty's natural-born Subjects of England) till the ſaid Officers ſhall be fully paid off and cleared, and be otherwiſe provided for.

Bounties granted to disbanded Soldiers.

Deficiencies made good.

To proceed in theſe ſofter Ways, the Commons *Reſolved* to make good the Deficiencies of former Funds; and therefore, on January the 22d, they voted the Sum of four hundred and ſeven thouſand Pounds, for making good the Deficiency of the Aid of three Shillings in the Pound, granted to his Majeſty the laſt Seſſion of Parliament; and nine hundred and forty thouſand Pounds, for making good the Deficiency of the Subſidies, and other Duties granted at the ſame time; and one hundred twenty nine thouſand Pound, for making good the Deficiency of the Aid of one Shilling in the Pound. And they ordered a Committee to conſider of Ways and Means for making good the ſaid Deficiencies. On Feb. the 1ſt, having taken the Arrears of the Army into conſideration, they *Reſolved* that the Sum of 1,254,000 l. was neceſſary to clear the Arrears of Pay, due to the Land-Forces, according to the Eſtabliſhment from the firſt of April 1692, to the laſt day of September 1697, beſides 940,815 l. for Subſiſtence, 28,295 l. for Contingencies, 5000 l. for the General-Officers, and 75,000 l. for the Guards and Garriſons; in all 2,348,102 l. And that there was but 855,502 l. remaining in the hands of the Pay-Maſter of the Army, the firſt day of January 1697-8.

Three Shillings in the Pound laid upon Land.

To raiſe the Sums which the Parliament had voted neceſſary for disbanding the Army, paying of Seamen, and towards making good of Loans, and the Deficiencies of former Funds; they *Reſolved*, February the 9th, to lay an Aid of three Shillings in the Pound upon Land, by way of Aſſeſſment upon every County, in proportion to the Rates of the firſt four Shillings Aid granted in 1691, by which means

they prevented any future Deficiency of this Fund. The next day, they conſidered the Account of what was due to ſome of his Majeſty's Allies, both for Arrears of Subſidies, and for Payment of Auxiliaries; and *Reſolved*, that 180,000 Rix-dollars were due to the Elector of Brandenburgh; 250,000 Rix-dollars to the Landgrave of Heſſe-Caſſel; 121,223 Rix-dollars to the Duke of Wolfenbuttle; 149,997 Rix-dollars to the Biſhop of Munſter; 50,000 Rix-dollars to the Duke of Hanover and Zell; 25,000 Rix-dollars to the Duke of Holſtein, and 200,000 Rix-dollars to the King of Denmark, both upon the fore-mentioned Account, and in conſideration of an entire Prohibition of Commerce between that Crown and France. They alſo *Reſolved*, that there was due the Sum of 177,000 Pounds to the Contractors for Bread and Forage. Four days after, they farther examined into the Debt of the Nation, and *Reſolved*, that the Sum of 1,392,742 l. was due upon the ſeveral Heads of the Eſtimate of the general Debt of the Navy; 204,157 l. to the Office of Ordnance; 340,708 l. for Tranſports for Reducing of Ireland; 125,785 l. for other Tranſport-ſervice; and 49,929 l. for quartering and cloathing the Army raiſed by Act of Parliament in 1677, and disbanded by another Act in 1679.

Sums voted to foreign Princes.

It being impoſſible for the Nation to acquit this vaſt Debt at once, the Commons reſolved to do it by degrees; and therefore voted, Firſt, That the Debt due for clearing the Army, from the firſt of April 1692, to the laſt day of September 1697, amounting to 1,254,000 l. the Sum of 139,066 l. be raiſed in the Year 1698, which would clear the Army to the firſt day of April, 1693. Secondly, That the Sum of 203,450 l. be raiſed for the clearing the Arrears of Subſiſtence to the Troops in England, between the firſt day of January 1696, and the firſt day of Auguſt, 1697. Thirdly, That 450,816 l. be raiſed for clearing the Arrears of Subſiſtence to the Troops in Flanders, to the 4th day of October, 1697. Fourthly, That the Sum of 50,000 l. be raiſed for the General-Officers. Fifthly, That 137,990 l. be raiſed for clearing the Arrears of Subſiſtence, due to the Troops in Flanders, from the 4th October, 1697, to the laſt of December. Sixthly, That the Sum of 1,100,117 l. be raiſed for the Navy; *viz.* 100,000 l. for Wear and Tear; 600,000 l. for Seamens-Wages, in Part of 1,862,849 l. due on that ſcore; 16,389 l. due to the Regiſter'd-Seamen; 24,000 l. for the Salaries of the Commiſſioners of the Admiralty, and other Officers, and for Contingencies; 28,663 l. for Half-pay Sea-Officers; 90,073 l. for Penſions to ſuperannuated Sea-Officers and Widows; 15,927 l. for the Charge of the Yards; 848 l. for the Muſter-maſters of the Out-Ports; 43,399 l. for Wages to Ships and Veſſels in Ordinary; 19,608 l.

Order of Paying off all Arrears of Debt.

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19,608 l. for Victuals of the Ships in Ordinary; 32,558 l. for Harbour-moorings; 35,848 l. for ordinary Repairs of the Navy; 55,520 l. for the two marine Regiments; and 37,286 l. for the Charge of the Office for Regiſteriug Seamen. Seventhly, That the Sum of 60,000 l. be allowed for the Ordnance. And Eighthly, That Proviſion be made towards Payment of the Principal and Intereſt of the Tranſport-Debt. All which Sums they reſolved to raiſe in the Year 1698.

Enquiry into the falſe Endorſements on Exchequer-Bills.

The falſe Endorſement of Exchequer-Bills was ſuch a ſcandalous Practice, that it took up much of the Commons time to enquire into it, and reform it. Theſe Exchequer-Bills were of mighty Uſe in the Nation, by ſupplying the Scarcity of Money during the Re-coining of the Silver Species. Now, becauſe there was an Intereſt of ſeven Pounds twelve Shillings *per Annum* allowed upon the ſecond iſſuing the ſaid Bills out of the Exchequer, after they had been paid in, on any of the King's Taxes; whereas at their firſt iſſuing out of the Exchequer, they bore no Intereſt; this encouraged ſeveral of the King's Officers, both in the Exchequer, the Cuſtoms, and the Exciſe, to contrive together to get great Sums of Money by falſe Endorſements on theſe Exchequer-Bills, before they had circulated about, and been brought into any Branch of his Majeſty's Revenue. The moſt conſiderable Perſons that had carried on this unwarrantable Practice, were Mr. Charles Duncomb, Receiver-General of the Exciſe; Mr. John Knight, Treaſurer of the Cuſtoms; Mr. Bartholomew Burton, who had a Place in the Exciſe-Office; and Mr. Reginald Marryot, one of the Deputy-Tellers of the Exchequer; which laſt, to get his Pardon, compounded to accuſe the reſt. Upon a full Proof of the matter, Duncomb and Knight, who were Members of the Houſe of Commons, were firſt expelled the Houſe, and committed Priſoners to the Tower; Burton was ſent to Newgate, and Bills were ordered to be brought in to puniſh them. The Bill againſt Mr. Duncomb, whereby a Fine of near half his Eſtate, (which at that time was judged to be worth 400,000 l.) was ſet upon him, did quickly paſs the Houſe of Commons, notwithſtanding the Oppoſition that was made to it, particularly by the Attorney-General: But being ſent up to the Houſe of Lords, and their Lordſhips being equally divided, the Duke of Leeds gave his caſting Vote for the rejecting of the Bill. It was then the common Report, that Mr. Duncomb diſpelled the impending Storm by a golden Sacrifice; which however Hiſtory cannot relate as a Truth, becauſe it never came to public notice: But we muſt not paſs over in ſilence, that Mr. Duncomb being ſet at liberty by the Order of the Houſe of Lords, without the Conſent of the Commons, the latter reſented it to that degree, that they

Duncomb and Knight, two Members, expell'd and impriſoned for the ſame.

cauſed

caused him to be remanded to the Tower of London, where he continued to the End of the Session. The Bills against Knight and Burton had the same fate; and so all those threatning Clouds that seemed ready to crush the false Endorsers, spent themselves in Vapour and Noise. Anno 10 W. III. 1698.

The Commons did this Year design to apply Part of all the forfeited Estates to the Use of the Public; in order to which, they enquired into the Grants made by King Charles II. and King James II. and ordered a Bill to be brought in to make them void. Afterwards they examined the Grants made by his present Majesty in Ireland; and because a Grant was found made to Mr. Railton, which Mr. Montague, Chancellor of the Exchequer, owned to be for his Benefit, a warm Debate arose thereupon; and the Enemies of the latter, who were not few, moved, that he should withdraw; which passing in the Negative, it was *Resolved* by a great Majority, That it was the Opinion of this House that the honourable Charles Montague Esq; Chancellor of the Exchequer, for his good Services to this Government, did deserve his Majesty's Favour. A Vote that will render his Name famous to all succeeding Ages. A Bill of Resumption ordered.

On Feb. 9th A Committee was appointed to draw up an humble Address to his Majesty, upon the Debate of the House, to suppress Prophaneness and Immorality, and all Books which endeavour to undermine the Fundamentals of the Christian Religion, and to punish the Authors. So that on Feb. 17th, this Address was presented to the King by the whole House State of Religion.

'May it please your Majesty, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do with great Joy and Comfort remember the many Testimonies which your Majesty has given us of your Sincerity and Zeal for the true Reformed Religion, as established in this Kingdom: And in particular, we beg leave to present to your Majesty our most humble and thankful Acknowledgments, for the late gracious Declaration your Majesty has made to us from the Throne, that you would effectually discourage Prophaneness and Immorality, which, chiefly by the Neglect and ill Example of too many Magistrates, are, like a general Contagion, diffused and spread throughout the Kingdom, to the great Scandal and Reproach of our Religion, and to the Dishonour and Prejudice of your Majesty's Government. The Commons Address.

'Therefore, in Concurrence with your Majesty's pious Intentions, we do most humbly desire, that your Majesty would issue out your Royal Proclamation, commanding all your Majesty's Judges, Justices of the Peace, and other Ma-

Anno 10 W. III. 1698.

giſtrates, to put in ſpeedy Execution thoſe good Laws that are now in force againſt Prophaneneſs and Immorality, giving due Encouragement to all ſuch as do their Duty therein: And that your Majeſty would be pleaſed to require from your Judges and Juſtices of Aſſize, from time to time, an Account of ſuch their Proceedings.

'And ſince the Examples of Men in high and public Stations have a powerful Influence upon the Lives of others, we do moſt humbly beſeech your Majeſty, that all Vice, Prophaneneſs and Irreligion, may in a particular manner be diſcouraged, in thoſe who have the Honour to be employed near your Royal Perſon; and in all others who are in your Majeſty's Service, by Sea and Land; appointing ſtrict Orders to be given to all your Commanders that they do not only ſhew a good Example themſelves, but alſo inſpect the Manners of thoſe under them; and that your Majeſty would upon all Occaſions diſtinguiſh Men of Piety and Virtue, by Marks of your Royal Favour.

'We do further in all Humility beſeech your Majeſty, that your Majeſty would give ſuch effectual Orders, as to your Royal Wiſdom ſhall ſeem fit, for the ſuppreſſing all pernicious Books and Pamphlets, which contain in them impious Doctrines againſt the Holy Trinity, and other fundamental Articles of our Faith, tending to the Subverſion of the Chriſtian Religion, and that the Authors and Publiſhers thereof may be diſcountenanced and puniſhed.

'And we do alſo moſt humbly beſeech your Majeſty, that your ſaid Proclamation may be ordered to be read at leaſt four Times in the Year, in all Churches and Chappels, immediately after divine Service; and at the Aſſizes and Quarter-Seſſions of the Peace, juſt before the Charge is given.

'We preſent to your Majeſty this our moſt humble Addreſs, proceeding from our Duty and Zeal for the Glory of God, and to the end that all our Councils may be bleſſed by his divine Aſſiſtance, and may produce Honour, Safety and Happineſs, with all the Bleſſings of a laſting Peace, to your Majeſty and your People.'

His Majeſty received this Addreſs with a ſingular Satisfaction, and gave this agreeable Anſwer.

His Majeſty's Anſwer.

'Gentlemen, I cannot but be very well pleaſed with an 'Addreſs of this nature; and I will give immediate Directi- 'ons in the ſeveral Particulars you deſire: But I could wiſh 'ſome more effectual Proviſion were made, for the ſup- 'preſſing thoſe pernicious Books and Pamphlets which your 'Addreſs takes notice of.'

Upon

Upon this ſeaſonable Intimation of his Majeſty, leave was given, Feb. 26th, to bring in a Bill or Bills, for the more effectual ſuppreſſing Prophaneneſs, Immorality and Debauchery; and Sir John Philips, and Mr. Edward Harley were ordered to prepare and bring in the ſaid Bill or Bills. In the mean time, an ingroſſed Bill from the Lords came down to the Commons, entitled, *An Act for the more effectual ſuppreſſing of Atheiſm, Blaſphemy and Prophaneneſs*: Which, being committed at the ſecond reading to a Committee of the whole Houſe, was, after ſome Amendments and Conferences, (on certain Points contain'd in it, which too nearly affected the Jews) happily agreed to. And in the mean time, his Majeſty, in immediate compliance to the Requeſt of the Commons, publiſhed a Proclamation for preventing and puniſhing Immorality and Prophaneneſs.

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An Act for ſuppreſſing Atheiſm, &c.

Several Bills being ready for the Royal Aſſent, his Majeſty came to the Houſe, March the 7th, and paſs'd *An Act for explaining the Mum Act*; *An Act for diſcharging the Arrears on ſeveral Annuities*; *An Act for all Retailers of Salt to ſell by Weight*; *An Act for preventing the Importation of foreign Bonelace*, &c. *An Act to prevent the throwing and firing of Squibs*; and to ſome private Acts.

Royal Aſſent given to ſeveral Acts.

And April 2. other Bills being ready for the Royal Aſſent, his Majeſty came again to the Houſe of Peers, and paſs'd *An Act for diſbanding the Army, paying Seamen*, &c. for which they gave 1,484,015 l. *An Act explaining ſome part of an Act made laſt Seſſions for the better Relief of the Poor*; *An Act for the enlarging, repairing and preſerving the Bridge and Key of the Borough of Bridgewater, in the County of Somerſet*; *An Act for diſſolving the Marriage, between Charles Earl of Macclesfield, and Anne his Wife, and to illegitimate the Children of the ſaid Anne*; and to ſeveral private Bills.

May the 16th, Articles of Impeachment were read, and agreed to be ingroſſed againſt J. Gaudett, D. Barran, P. Longueville, S. Seignorett, R. Baudouin, P. Deheerce Merchants, and J. Pierce Gent. for confederating with ſeveral other Perſons, in carrying on a Trade to France during the late War.

Several Merchants impeach'd of high Crimes and Miſdemeanours.

For carrying on a Correſpondence with ſeveral Perſons in France, and giving intelligence to the Enemy of the State of the Realm.

For importing great Quantities of French Goods.

For Exporting Wool.

For conveying Criminals out of the Kingdom.

And for ſelling French Luſtrings, and Alamodes with counterfeit Seals and Marks, in breach of ſeveral Laws.

The ſame day the King gave the Royal Aſſent to *An Act for granting to his Majeſty ſeveral Duties upon Coals and Culm*;

Royal Aſſent given to ſeveral Acts.

Anno 10 W. III. 1698. *An Act for continuing the Duties upon Coffee, Teas, Chocolate and Spices, for Diſcharge of the Tranſport-Debt; An Act for the better preventing the diminiſhing the Coin; An Act relating to an Act for taking away the Courts held before the Preſident of the Marches of Wales; An Act for determining Differences by Arbitration; An Act for the better Payment of Bills of Exchange; An Act to naturalize the Children of Officers and Soldiers, and others, being the natural-born Subjects of this Realm, who were born abroad during the War; An Act to repeal an Act to reſtrain the exceſſive making of Malt*; and 19 private Acts

Grievance of the Victuallers of the Tower Hamlets.

The 20th, the Report on a Petition from the Victuallers, *&c.* of the Tower-Hamlets, complaining, that under pretence of Subſiſtence-Money, *&c.* they had been obliged by the Juſtices to diſburſe ſeveral Sums to the Officers and Soldiers of Colonel Tidcombe's Regiment, *&c.* was read, together with the Reſolutions of the Committee, to whom the ſaid Petition was referred, on the ſame; which were agreed to by the Houſe, and are as follow.

Reſolved, That the Petitioners had no Cauſe of Complaint againſt the Juſtices of the Peace, who acted in relation to the quartering Colonel Tidcombe's Regiment.

That by an Account ſtated between the Victuallers, and Mr. Moyer Agent to the ſaid Regiment, it appears that the Sum of three thouſand, ſix hundred and twenty three Pounds fourteen Shillings and eight Pence, is due to the ſaid Victuallers; and that there is due from his Majeſty to the ſaid Regiment, four thouſand, nine hundred, and ſeventy five Pounds nine Shillings and ſeven Pence.

The great Caſe of the Eaſt-India Company, (which had been depending many Years, and becauſe of its Intricacy, had been firſt referred by the Parliament to the King, and by them back to the Parliament again,) was taken into Conſideration by the Houſe, May 4. but we have poſtpon'd the Proceedings on that Article till now, for the ſake of giving it to the Reader entire, as follows:

The Diſpute between the two Eaſt-India Companies.

The old Company having offered to advance 700,000 l. at four *per cent.* for the Service of the Government, in caſe the Trade to India might be ſettled on them excluſive of all others, the Houſe ſeemed inclined to embrace their Propoſal; when another number of Merchants, of whom one Shepherd was the Chief, and who were protected by Mr. Montague, Chancellor of the Exchequer, propoſed, to the Houſe to raiſe two Millions at 8 *per cent.* on Condition the Trade to India might be ſettled on the Subſcribers, excluſive of all others: They alſo propoſed that theſe Subſcribers ſhould not be obliged to trade in a Joint-Stock; but if any Members of them ſhould afterwards deſire to be incorporated, a Charter ſhould be granted to them for that purpoſe. The Houſe judged

judged this new Overture not only to be more advantagious to the Government, but likewiſe very likely to ſettle this controverted Trade on a better Foundation than it was on before. A Bill was therefore, on May the 26th, ordered to be brought into the Houſe, for ſettling the Trade to the Eaſt-Indies on thoſe who ſhould ſubſcribe the two Millions, according to the Limitations beforementioned, and the following Reſolutions. Anno 10 W. III. 1698.

Reſolutions thereon.

'First, That every Subſcriber might have the liberty of trading Yearly, to the amount of his reſpective Subſcription; or might aſſign over ſuch his liberty of Trading to any other Perſon. Secondly, That his Majeſty be empowered to incorporate ſuch of the ſaid Subſcribers, as ſhould deſire the ſame. Thirdly, That the Powers and Privileges for carrying on the Eaſt-India Trade, ſhould be ſettled by Parliament. Fourthly, That the ſaid Subſcribers ſhould enjoy the ſaid eight Pounds *per cent.* and liberty of trading to the Eaſt-Indies,* excluſive of all others, for the terms of ten Years, and until the ſame ſhould be redeemed by Parliament. Fifthly, That every Perſon ſubſcribing five hundred Pounds, have a Vote; and no Perſon to have more Votes than one. Sixthly, That all Ships laden in the Eaſt-Indies, ſhould be obliged to deliver in England. Seventhly, That no Perſon that ſhould be a Member of any Corporation trading to the Eaſt-Indies, ſhould trade otherwiſe than in the Joint-Stock of ſuch Corporation of which he was a Member. Eighthly, That five Pounds *per Cent. ad valorem*, upon all returns from the Eaſt-Indies, be paid by the Importer; to be placed to the Account of the Subſcribers, towards the charge of ſending Ambaſſadors, and other extraordinary Expences. And Ninthly, That over and above the Duties now payable, a further Duty of one Shilling and ten Pence *per* Pound Weight, be laid upon all wrought Silks imported from India and Perſia; to be paid by the Importer.' This Bill being accordingly brought into the Houſe, the old Eaſt-India Company preſented a Petition againſt it.

State of the Dividends, Debts, &c. of the old Company.

And June the 10th, a Motion being made, that the ſaid Bill be read a ſecond Time, it paſs'd in the Affirmative, Yeas 135. Noes 99.

The 13th, the Committee, appointed to inſpect the Books of the Eaſt India Company, made their Report; by which it appeared:

That the original Stock of the ſaid Company in the Year 1657, was 369,891 l. 5 s

That 390 $\frac{1}{2}$ *per cent.* was divided between Octob. 1. 1661. and April 1. 1681.

That at a general Court, November 2. 1681. a Call was made

* *The Houſe divided on this Article, and it was carried in the Affirmative, Yeas* 126. *Noes* 99.

Anno 10 W. III. 1698.

made for the Reſidue of the Adventurers Subſcriptions, at 100 *per cent.* at two equal Payments.

That Jan. 18. 1681. the ſaid Call was revoked, and a Dividend of 150 *per cent.* was order'd, *viz.* 100 *per cent.* to double their Stock, and 50 *per cent.* in Money.

That it appear'd upon Enquiry, that this ſudden Difference in the Company's Affairs, was owing to the Arrival of 6 Ships valued at 500,000 l.

That December 31. 1680. the Company was in debt 532,589 l. 7 s. 6 d.

That in the Year 1681. they took up at Intereſt 80,940 l.

That from the Time of doubling their Stocks as above, their Dividends were made regularly after the Rate of 25 *per cent.*

So that their Dividends from 1657 to 1681, amount to 440 ½ *per cent.* and from 1681 to 1691 doubling the ſame, according to the nominal Duplication of the Stock, to 400 l. *per cent.* in all from 1657 to 1691, 840 ½ *per cent.* of the 369,891 l. 5 s. original Stock.

That theſe Dividends were always made on the Arrival of Ships on general Computations, without the Help of their Books or a minute State of their whole Account.

That March 31. 1698. their Books not being balanced any farther, the Total of their Debt upon Bond, amounted to 631,554 l. 19 s. 10 d.

That what is owing by Cuſtoms, amounts by Computation to ——— l. 44,177 9 4

And for Freight and Demurrage —— 10,191 7 3

That in regard to their Debts in India, they could not compute them in leſs than ten Days.

That their Caſh amounted to —— l. 5400 0 0

That there was due to them upon Account. 10,000 0 0

That they have Salt-Petre to the value of 13,000 0 0

That the Cargoes of their Ships abroad are valued at —— 925,539 5 3

That with regard to their dead Stock in India, they give the ſame Anſwer that they did to their Debts there.

That the Company having received 744,000 l. new Subſcriptions, and Enquiry being made how it was diſpoſed of, it was anſwer'd that it was impoſſible to give the Particulars, but that all was comprized in their Caſh-Books; which being examined, they found that, beſide 325,565 l. 0 s. 4 d. repaid to the old Adventurers, the following Particulars were plac'd to Account, *viz.*

	l.	s.	d.
November 30. 1693. paid for the Company's ſpecial Service ——	24,983	00	0
December 7. 1694. for Diſburſements for the Company ——	7828	13	0

To

To Sir Thomas Cook, on his Note dated January 10. 1693. } 90,000 00 0

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A Motion was then made, that Satisfaction be given to the late Subſcribers to the Eaſt-India Company, for all Damages done them, by making Dividends beyond the real Value of the Company's Stock, at the Time of ſuch Dividend; And alſo by ordering to be paid out of the new Subſcriptions a Sum of about 325,000 l. lent by the Members of the old Company by way of Increaſe of their Capital Stock; ſuch Damage to be anſwered out of the Eſtates of the ſaid Members, reſpectively receiving ſuch Dividend and Payment: and a Debate aroſe, which was adjourn'd till the next day, when the ſaid Company remonſtrated, that at the time of calling in the 50 *per Cent.* they had a good Eſtate to that Value: That the ſaid 50 *per Cent.* was repay'd to the old Adventurers, with the Concurrence of the new Subſcribers.

Progreſs of the Bill.

The 20th, both Companies delivered in their Propoſals.

The 22d, the Amendments to the Bill were read, one of which being to reſtrain the Company for the future from borrowing Money at above 6 *per Cent.* it paſs'd in the Negative, Yeas 92, Noes 103.

Another, enacting, That the ſaid Company ſhall pay and diſcharge all juſt Debts which they now owe or are ſubject to, and that all Manors and Lands, heretofore granted to them under the Great Seal, or any private Grant, which they now or hereafter ſhall be poſſeſſed of, ſhall be ſubject to the Payment of ſuch juſt Debts, paſs'd in the Affirmative, Yeas 113, Noes 100.

Another being offer'd, that the Company be eſtabliſhed in purſuance of this Act, and that their Succeſſors ſhall never ſuffer their Debts to exceed their capital Stock, undivided; a Motion was made to adjourn, and over-rul'd; after which, the ſaid Amendment was added to the Bill.

The 23d, another Amendment was offered to the Bill, That the Trade eſtabliſhed by this Act, except the excluſive Right, ſhall be ſubject to ſuch Regulations as the Parliament ſhall think moſt for the Advantage of the Kingdom, and paſs'd in the Negative, Yeas 66, Noes 97.

A Motion being then made, that the Bill and Amendments be engroſs'd, it was reſolv'd in the Affirmative, Yeas 120, Noes 80.

The 26th, the Bill was paſs'd on a Diviſion, Yeas 115, Noes 78.

The Bill paſs'd in favour of the new Company.

We muſt now go back, in order to take notice of ſome other Particulars, which were tranſacted this Seſſion.

May 28. *Reſolved*, That the new Subſidies of Tunnage and Poundage, to make up his Majeſty's Revenue 700,000 l. *per Ann.* be granted to his Majeſty for Life.

700,000 l. *per Ann.* granted to the King for Life.

That

Anno 10 W. III. 1698.

That the Surplus of the ſaid Subſidies ſhall be diſpos'd of at the Diſcretion of Parliament.

The 30th, the Anſwers of Gaudett and the other Perſons impeached, were read, and importing that they would abide their Trial, Replies were order'd to be prepared thereto.

Three Negatives.

June 8. A Negative was put on the ſecond Reading of certain Reſolutions of a Committee appointed to examine the Petition of Col. Michelborne, joint Governour with Dr. Walker of London-Derry; Tho' it appear'd, that all the Allegations in the ſaid Petition were made good; tho' 992 l. was due to the ſaid Colonel upon his Pay as Governour, and 14,949 l. 18 s. 6 d. to the ſaid Colonel, his Officers and Soldiers; and tho' the ſaid Committee gave it as their Opinion, that, in conſideration of the eminent Services of the ſaid Colonel, and his ſaid Regiment, an Addreſs ought to be preſented to his Majeſty in their favour.

The 9th, on a Reading of the Civil-Liſt Bill, a Clauſe being offer'd to ſecure the Rights of the late Bankers to their Debts, it paſs'd in the Negative, Yeas 82, Noes 92.

The 10th, the Houſe entring into Conſideration for granting a further Aid to his Majeſty, by a Quarterly Poll; a Motion was made to adjourn, and paſs'd in the Negative, Yeas 19, Noes 89.

The 11th, Order'd that a Clauſe of Loan be admitted on the ſaid Bill, and on the Duties for Coal and Culm.

Controverſy between the two Houſes, occaſioned by the Impeachment of Gaudett, &c.

During this Interval, the two Houſes had ſeveral Conferences on a Demand of the Commons, to have a convenient Place aſſign'd them to manage the Proſecution of their Impeachment againſt Gaudett, *&c.* which the Lords refus'd, as unprecedented, except in capital Caſes, when Trials were carried on in Weſtminſter-Hall. The Controverſy was carry'd on with great Steddineſs on both ſides, but came to no Iſſue; the ſaid Perſons acknowledging their Guilt, upon which they were ſeverally fin'd by the Lords; and the Seſſion ſoon after breaking up.

Iſſue of the ſaid Impeachment.

Molyneux's Caſe of Ireland complain'd of.

May 21ſt, Complaint had been made of a printed Book, entitled, *The Caſe of Ireland being bound by Acts of Parliament in England*, (written by William Molyneux of Dublin Eſq;) which denied the Dependence of Ireland upon the Authority of the Parliament of England. A Committee was thereupon appointed, to examine further into the ſaid Pamphlet, to enquire into the Author of it; and alſo to ſearch what Proceedings had been in Ireland, that might occaſion the ſaid Book; and an Addreſs to the King voted, that his Majeſty would give Directions for the Diſcovery and Puniſhment of the Author.

June 22. Upon the Report of the Committee, it was unanimouſly reſolved, 'That the ſaid Book was of dangerous

dangerous conſequence to the Crown and People of England, by denying the Authority of the King and Parliament of England, to bind the Kingdom and People of Ireland, and the Subordination and Dependence that Ireland has, and ought to have upon England, as being united and annexed to the Imperial Crown of this Realm; and that a Bill entitled, *An Act for the better Security of his Majeſty's Perſon and Government*, tranſmitted under the Great Seal of Ireland; whereby an Act of Parliament made in England, was pretended to be re-enacted, Alterations therein made, and divers things enacted alſo, pretending to oblige the Courts of Juſtice, and the Great Seal of England, by the Authority of an Iriſh Parliament; had given occaſion and encouragement, to the forming and publiſhing the dangerous Poſitions contained in the ſaid Book.' Anno 10 W. III. 1698.

The Houſe in a Body then preſented an Addreſs to the King: Wherein they laid before his Majeſty, the dangerous Attempts that had been of late made by ſome of his Subjects of Ireland, to ſhake off their Subjection to, and Dependence on this Kingdom; which had manifeſtly appeared to the Commons, not only by the bold and pernicious Aſſertions in a Book publiſhed and dedicated to his Majeſty, entitled, *The Caſe of Ireland being bound by Acts of Parliament in England ſtated:* But more fully and authentically by the Votes and Proceedings of the Houſe of Commons in Ireland, in their late Seſſions; and whereby the forementioned Bill ſent hither under the great Seal of Ireland, whereby they would have an Act paſſed in the Parliament of England, expreſly binding Ireland, to be re-enacted there, and Alterations therein made; ſome of which amounted to a Repeal of what is required by the ſaid Act made in England: and in others, of the ſaid Alterations, pretending to give Authority to, and oblige the Courts of Juſtice and Great Seal here in England. That this they could not but look on as an occaſion and encouragement, in the forming and publiſhing the dangerous Poſitions contained in the ſaid Book. That the Conſequence of ſuch Poſitions and Proceedings, would be ſo fatal to this Kingdom, and even to Ireland itſelf, that they needed not to be enlarged on, or aggravated. Therefore they reſted ſatisfied that his Majeſty by his Royal Prudence, would prevent their being drawn into Example; ſo they aſſured his Majeſty of their ready Concurrence and Aſſiſtance, in a parliamentary way, to preſerve and maintain the Dependence and Subordination of Ireland to the Imperial Crown of this Realm And they humbly beſought his Majeſty, that he would give effectual Orders, to prevent any thing of the like nature for the future, and the pernicious Conſequences of what was Addreſs thereon.

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paſt, by puniſhing and diſcountenancing thoſe that had been guilty thereof: That he would take all neceſſary care that the Laws which direct and reſtrain the Parliament of Ireland, in their Actings, be not evaded, but ſtrictly obſerved; and that he would diſcourage all things which might in any degree leſſen the Dependence of Ireland upon England. To this his Majeſty's Anſwer was, That he would take care that what was complained of, might be prevented and redreſſed as the Commons deſired.

Addreſs in Behalf of the City of London-derry, the Governour and Gariſon.

The 23d, an Addreſs was read and agreed to, recommending the Services and Sufferings of the City of London-Derry to his Majeſty's Conſideration, for Relief in the Kingdom of Ireland; that they might no longer remain a ruinous Spectacle to all, a Scorn to their Enemies, and a Diſcouragement to his Majeſty's well-affected Subjects.

As likewiſe the Governour and Gariſon of the ſaid City, as thoſe who thro' the utmoſt Sufferings and Extremities have defended the ſame; and for ſo ſignal Service, did deſerve to have ſome ſpecial Marks of his Majeſty's Favour for a laſting Monument to Poſterity.

In anſwer to which, his Majeſty was pleaſed to promiſe to take them into Conſideration.

Royal Aſſent given to ſeveral Acts.

July 5. The King came to the Houſe of Peers, and gave the Royal Aſſent to the Act *for the new Eaſt-India Company; to an Act for paying to his Majeſty, his Heirs and Succeſſors, farther Duties on Stampt Paper*, &c. *an Act for raiſing the* 700,000*l. a Year, for the Civil-Liſt on Tunnage and Poundage*, &c.

King's Speech to both Houſes.

'My Lords and Gentlemen,

'I Cannot take leave of ſo good a Parliament, without publicly acknowledging the Senſe I have of the 'great things you have done for my Safety and Honour, 'and for the Support and Welfare of my People.

'Every one of your Seſſions hath made good this Character. That happy uniting of us in an Aſſociation for 'our mutual Defence; the remedying the Corruption of 'the Coin, which had been ſo long growing upon the Nation; the reſtoring of Credit; the giving Supplies in ſuch 'a manner for carrying on the War, as did by God's Bleſſing produce an honourable Peace; and after that, the 'making ſuch Proviſions for our common Security, and towards ſatisfying the Debts contracted in ſo long a War, 'with as little Burthen to the Kingdom as is poſſible, are 'ſuch things as will give a laſting Reputation to this Parliament, and will be a Subject of Emulation to thoſe which 'ſhall come after.

'Beſides all this, I think myſelf perſonally obliged to return my Thanks to you, Gentlemen of the Houſe of Com-

'mons,

'mons, for the Regard you have had to my Honour, by the 'eſtabliſhing of my Revenue. Anno 10 W. III. 1698.

'My Lords and Gentlemen,

'There is nothing I value ſo much as the Eſteem and 'Love of my People; and as for their ſakes I avoided no 'Hazards during the War, ſo my whole Study and Care 'ſhall be, to improve and continue to them the Advantages 'and Bleſſings of Peace.

'And I earneſtly deſire you all, in your ſeveral Stations, 'to be vigilant in preſerving Peace and good Order, and in 'a due and regular Execution of the Laws, eſpecially thoſe 'againſt Prophaneneſs and Irreligion.'

And then the Lord-Chancellor, by his Majeſty's Command, prorogued the Parliament until Tueſday the ſecond Day of Auguſt next, which was ſoon afterwards diſſolved.

On Tueſday December 6th, a new Parliament met at Weſtminſter; and his Majeſty coming to the Houſe of Peers with the uſual Solemnity, ſent for the Commons, to whom the Lord-Chancellor ſignified his Majeſty's Pleaſure, that they ſhould proceed to the Choice of a Speaker, and preſent him on Friday next. The Commons made choice of Sir Thomas Littleton Bart. who being preſented on December 9th, was graciouſly approved by his Majeſty, who then made this Speech to both Houſes. Fourth Parliament.

'My Lords and Gentlemen,

'I Have no doubt but you are met together with Hearts 'fully diſpoſed, to do what is neceſſary for the Safety, 'Honour and Happineſs of the Kingdom; and that is all I 'have to ask of you. King's Speech.

'In order to this, two Things ſeem principally to require 'your Conſideration.

'The one is, what Strength ought to be maintained at 'Sea, and what Force kept up at Land for this Year. All 'I ſhall obſerve to you upon this head is, that the flouriſhing of Trade, the ſupporting of Credit, and the quiet of 'People's Minds at home, will depend upon the opinion 'they have of their Security; and to preſerve to England 'the Weight and Influence it has at preſent on the Councils and Affairs abroad, it will be requiſite Europe ſhould 'ſee you will not be wanting to yourſelves.

'The ſecond thing I ſhall mention to you as of great 'conſequence, is the making ſome further Progreſs toward 'diſcharging the Debts, which the Nation has contracted 'by reaſon of the long and expenſive War. In this the 'public Intereſt as well as Juſtice is concerned; and, I 'think an Engliſh Parliament can never make ſuch a

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'Miſtake, as not to hold ſacred all Parliamentary Engagements.

'Gentlemen of the Houſe of Commons,

'I do earneſtly recommend theſe things to you, that you 'may provide ſuch Supplies as you ſhall judge neceſſary for 'theſe ſeveral Occaſions.

'My Lords and Gentlemen,

'I think it would be happy, if ſome effectual Expedient 'could be found for employing the Poor, which might tend 'to the Increaſe of our Manufactures, as well as remove a 'heavy Burthen from the People. I hope alſo you will em-'ploy your Thoughts about ſome good Bills for the Ad-'vancement of Trade, and for the further diſcouraging of 'Vice and Prophaneneſs. The Things I have mentioned 'to you being of common Concern, I cannot but hope for 'Unanimity and Diſpatch.'

This Speech, as uſual, being taken into Conſideration by the Houſe, it was thought by the Majority but a natural Effect of Peace, to reduce the Army. Accordingly, after the Affair had been thoroughly debated on both ſides, they came to the following Reſolutions, *viz.*

Vote to reduce the Army.

'That all the Land-Forces of England, in Engliſh Pay, exceeding ſeven thouſand Men (and thoſe conſiſting of his Majeſty's natural-born Subjects) be forthwith paid and diſbanded. And that all the Forces in Ireland, exceeding twelve thouſand Men (and thoſe his Majeſty's natural-born Subjects, to be kept and maintained by the Kingdom of Ireland) be likewiſe forthwith disbanded. And they ordered a Bill to be brought in upon the ſaid Reſolutions, which was eagerly puſhed on, and ſoon brought to perfection.

Theſe Proceedings, we are told, made the King very uneaſy; and the more ſo, becauſe his Dutch Regiment of Guards, who had ſo long ſerved him, was by this Bill to be torn away from him, and to be ſent out of the Kingdom. However, his Majeſty like a wiſe and good Prince, never oppoſing his own Will, to what ſeemed to be the Voice and Judgment of his People, choſe rather to compliment the Commons, than to contend with them. So on Wedneſday Feb. the 1ſt, the King came to the Parliament, and gave the Royal Aſſent to ſeveral Bills.

After which his Majeſty made the following Speech, to ſhew his Reaſons for paſſing the disbanding Bill, and yet to expoſtulate a little upon the Hardſhip of it.

'My

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King's Speech to both Houſes on that occaſion.

'My Lords and Gentlemen,

'I Came to paſs the Bill for disbanding the Army, as ſoon as I underſtood it was ready for me: Though in our preſent Circumſtances there appears great hazard in breaking ſuch a Number of the Troops: And though I might think my ſelf unkindly uſed, that thoſe Guards who came over with me to your Aſſiſtance, and have conſtantly attended me in all the Actions wherein I have been engaged, ſhould be removed from me; yet it is my fixed opinion, that nothing can be ſo fatal to us, as that any Diſtruſt or Jealouſy ſhould ariſe between me and my People, which I muſt own would have been very unexpected, after what I have undertaken, ventured, and acted for the reſtoring and ſecuring of their Liberties.

'I have thus plainly told you the only Reaſon which has induced me to paſs this Bill: And now I think my ſelf obliged, in Diſcharge of the Truſt repoſed in me, and for my own Juſtification, that no ill Conſequences may lie at my door, to tell you as plainly my Judgment, that the Nation is left too much expoſed.

'It is therefore incumbent on you to take this Matter into your ſerious Conſideration, and effectually to provide ſuch a Strength as is neceſſary for the Safety of the Kingdom, and the Preſervation of the Peace which God hath given us.'

The Commons were ſo well pleaſed with this gracious Complaiſance of the King, that they immediately reſolved, That an humble Addreſs be preſented to the King, to give his Majeſty Thanks for his moſt gracious Speech to both Houſes of Parliament with the Aſſurances of this Houſe, That they will ſtand by, and aſſiſt his Majeſty in the Support of him and his Government, againſt all Enemies whatſoever. And they accordingly put their Reſolution into this Form of Addreſs.

'Moſt gracious Sovereign,

Commons Addreſs of Thanks.

'We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, being highly ſenſible of the Difficulties your Majeſty has undertaken, the Labours you have ſuſtained, and the Hazards you have run, in reſcuing us from Popery and Arbitrary Power, reſtoring our Liberties, and giving Peace and Quiet to all Chriſtendom; beg leave to return our moſt hearty Thanks, for your moſt gracious Speech: In which you expreſs ſo great a Regard for the good Will and Affections of your People, and have given ſo undeniable a Proof of your Readineſs to comply with the Deſires of your Parliament; and as

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your Majeſty has ſhewn a moſt tender and fatherly Concern for the Security and Safety of your People; ſo give us leave to aſſure your Majeſty, That you ſhall never have reaſon to think the Commons are undutiful, or unkind to your Majeſty; but that we will upon all occaſions ſtand by, and aſſiſt your Majeſty in the Preſervation of your ſacred Perſon, and Support of your Government againſt all your Enemies whatſoever.'

This Addreſs being preſented by the whole Houſe, had the Honour to be thus anſwered by the King.

King's Anſwer.

' Gentlemen,

' I take this Addreſs very kindly: I am fully ſatisfied of ' your Duty and Affection to me, and have no doubt but ' you will always act in the manner you have expreſſed on ' this occaſion.'

Admiral Ruſſel's Account.

March 10. An Account of Admiral Ruſſel's Receipts and Diſburſements for the Service of the Navy was laid before the Houſe. Whereby it appear'd that the Admiral had received 10,000 l. and had diſburſed 18,666 l. But, of the Items contained in his Account, but two Vouchers being ſent to the Auditors, one of which was for 2000 l. and the other for 400 l. the ſaid Auditors refuſed to paſs the ſaid Account, till they received his Majeſty's Command, ſignify'd from the Admiralty-Board.

The 11th, The Houſe divided, on a Motion that the Bill for granting a Supply of 1,484,015 l. for Disbanding the Army, *&c.* ſhould then be read a ſecond Time, it paſs'd in the Negative, Yeas 72, Noes 139.

The ſame Day, the ſeveral Half-pay Eſtabliſhments were laid before the Houſe, by which it appear'd that the annual Expence of the ſaid Eſtabliſhments would be 57,334 l. 13 s. 10 d. *per Annum.*

A Bill to reſtrain the Number of Officers in the Houſe of Commons paſs'd.

The 16th, a Bill *to reſtrain the Number of Officers ſitting in the Houſe of Commons*, was read the third Time, paſs'd, and ſent up to the Lords for their Concurrence.

The

The 17th, the Commissioners of the Navy presented to the House, according to Order, an Account of what Money, Tallies, and Malt-Tickets, remained in their Hands, which was as follows:

	For Seamen's-Wages.			Wear and Tear.			Half-Year's Wages to Workmen.			Regiment. Office.			Marines.			Of Prizes. Thirds.			Of Prizes. Tenths.			Total.		
	l.	s.	d.																			l.	s.	d.
In Money	26,538	6	0							500						24	4	6	6593	12	4	33,656	2	10
Malt Lottery-Tickets	40,374	17	7							23	00		1802	0	0							44,467	17	7
On the 3 s. Aid	74,903	7	3																			74,903	7	3
On Coal transfer'd to Leather	58,620	7	2	4926	13	8																63,547	0	10
First 3 s. Aid	113,829	1	11																			113,829	1	11
Duties on Coals	61,215	2	1																			161,215	2	1
Poll-Act	200																					200		
Additional Excise	5863	8	11																			5863	8	11
Births, Marriages and Burials				807	10																	807	10	
Fourth 4s. Aid				455	13	2																455	13	2
New E. Ind. Comp.				988	2		60,031						217	4	0							61,236	6	0
	382,532	12	11	6189	16	10	60,031	0	0	2000	0	0	2019	4	0	24	4	6	6592	12	4	460,190	10	7

(95)

At

An Account of Cash, &c. in the hands of the Treasurer of the Navy.

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At the Foot of this Account, was a Note ſignifying, That the Money due for Wages was then paying off, and that the 60,031 l. Tallies for the Yards, was juſt received, and would likewiſe be paid to the Workmen, as ſoon as they could be turn'd into Money.

An Account of Grants.

The ſame day, an Account of the Grants made ſince Jan. 1, 1697, was preſented to the Houſe, an Abſtract of which is as follows:

A Grant to Francis Vaughan, of ſeveral Goods and Chattles, Value 129 l. ſeiz'd by the Sheriff of Somerſet, upon a *ſpecial Capias*.

A Grant to Sir Francis Leigh, in conſideration of 600 l. paid into the Exchequer, and 1000 l. to Sir Henry Sheers, of certain Lands forfeited by John Strafford Eſq; out-law'd, under the yearly Rent of 6 s. 8 d.

A Grant to Ralph Grey Eſq; Governor of Barbadoes of 1200 l. *per Ann.* during Pleaſure, out of the 4 ½ *per Cent.* ariſing within the ſaid Iſland.

A Grant to Samuel Day Eſq; Governor of Bermudas, of 240 l. *per Ann.* out of the Exchequer, during his Continuance in that Government.

A Releaſe or Diſcharge to Anthony Stoner and others, as Sureties for Daniel Ballard of a Bond of 2000 l. entered into by John Dutton Colt Eſq; Collector of Briſtol.

A Privy-Seal, for paying 85,000 l. with 6 *per Cent.* Intereſt, to Prince George of Denmark, in lieu of 340,000 Rix-dollars due to the ſaid Prince upon two Mortgages on the Iſle of Janneren, and the Baillieries of Transbuttle and Steinhurſt, Part of the Duke of Holſtein's Territories, ſurrender'd to the ſaid Duke on his Majeſty's Promiſe to pay the ſame.

A Warrant from his Majeſty, to the Truſtees for Sale of Fee-farm Rents, to convey a Fee-farm Rent of 66 l. 13 s. 4 d. *per Ann.* ariſing out of Brigſtock-Park, to Frances, Counteſs Dowager of Salisbury, her Heirs and Aſſigns for ever; in Corroboration of her Title to the ſaid Rent and Arrears thereof, purchaſed of his Majeſty.

A Grant of 200 l. *per Ann.* to Iſaac Manley Eſq; for the Life of his * Father John Manley Eſq; payable out of the Poſt-Office.

A Privy-Seal. for 120 l. *per Ann.* to George Fielding Eſq; during Pleaſure

A Grant of the Office of Trover and Poiſer, to the Mayor and Burgeſſes of Newcaſtle, for three Lives.

A Diſcharge to the Marquis of Wincheſter of 1050 Ounces of White-Plate, for the Service of his Table, when Chamberlain to the late Queen.

A

* *Perhaps the Gentleman of that Name, committed to the Tower for his free Speaking in Sir John Fenwick's Caſe. Vid. p.* 52.

A Warrant for paying to the Treaſurer of Greenwich-Hoſpital 19500l. being the Amount of the Fines impoſed on Gaudett and others, *vid. P.* 88. Anno 11 W. III. 1699.

A Grant to Nathaniel Crow, of the forfeited Eſtates, Real and Perſonal, belonging to Arthur Mangey, Robert Child, and J. Hurſt, convict of High-Treaſon, ſubject to the Payment of 256l. 6s. and Intereſt to Richard Aſhton Eſq; and 300l. to ſuch Perſons as his Majeſty ſhall be pleaſed to appoint.

A Grant to the Poor of St. Margaret's, of the Old Clock-Houſe and Bell therein, in Palace-yard.

A Grant to Otto Baron of Schwerin, his Heirs and Aſſigns for ever, of the Eſtate of Erngert Maria, his Wife; which, by reaſon of his being an Alien born, is veſted in his Majeſty.

A Grant to Doctor Titus Oates, of 300l. *per Ann.* for 99 Years, out of the Poſt-Office, if he or his Wife ſhould live ſo long.

A Grant of the Iſle of Scilly, to Sidney Lord Godolphin, for the Term of 89 Years, after the Expiration of the preſent Leaſe, at the yearly Rent of 40l.

A Grant of 200l. *per Ann.* to the Relict of Dr. Tillotſon, in addition to her former Annuity of 400l. payable out of the Duty of 4 *per Cent.* during Life.

A Warrant from his Majeſty, to the Truſtees for Sale of Fee-farm Rents, to contract with the Earl of Dorſet, for 500l. *per Ann.* in the ſaid Rents, and to convey the ſame to him.

A Privy-Seal, for 15,000l. *per Ann.* to the Duke of Glouceſter, during Pleaſure.

A Grant to the Earl of Jerſey of 3000l. as his Majeſty's Bounty.

The like to Doctor Oates, of 500l.

A Warrant for 15,000l. to the French Proteſtants.

A Grant of a Piece of Wood-land in Richmond New-Park, valued at 6l. *per Ann.* to Laurence Earl of Rocheſter, his Heirs and Aſſigns, for ever, at the annual Rent of 6s. 8d.

A Grant, in Truſt for the Earl of Ranelagh, of the Reverſion of certain Parcels of Ground in Chelſea; whereon his Lordſhip hath built a Houſe, under the yearly Fee-farm Rent of 5l.

A Grant to Japhet Crooke, of certain Shares in the Phœnix Brew-Houſe, forfeited by the Attainder of Sir John Friend, in Conſideration of 5500l. to be paid into the Exchequer:

Not yet paſt.

A Diſcharge to John Dee, Senior, of Part of a Fine of 300l.

A Grant to Patience Bond of a Leaſe, ſeiz'd into his Majeſty's Hand, upon the Outlawry of Epaphroditus March

Annoii W. III. 1699.

A Warrant to the Commiſſioners for Sale of Fee-Farm Rents, to contract with R. Topham Eſq; for the Purchaſe of 14 l. 5 s. 4 d. ½. *per Ann.* payable out of the Mannor of Windſor.

A Diſcharge to Pierce Row of a Fine of 500 Marks.

A Grant to ——— of a Penſion for Life of 500 l. *per ann.* payable out of the Poſt-Office.

A Warrant for the Payment of 600 l. being the Remainder of 1800 l. ſet in ſuper upon the Proprietors of the new River Water in the Receivers Account of the Poll-Tax.

A Grant to John Gore, his Heirs and Aſſigns for ever, of the Reverſions expectant upon ſeveral Eſtates for Lives in ſeveral Manors, *&c.* belonging to Sir William Williams Bart. and which were devis'd to his Majeſty after the Deaths of two Sons of Sir Bourchier Wray and others, ſubject to the Payment of a Rent-Charge of 540 l. *per Annum*, and other Incumbrances.

A Grant to William Petre of ſeveral Goods and Chattels forfeited by Sir Auguſtine Palſgrave, upon an Outlawry.

Grants, &c. in Ireland, from January 1. 1697.

A Warrant to the Lords Juſtices to levy 8000 l. purſuant to a Clauſe in the Act of Settlement, or Explanation, on the Eſtates of ſeveral Roman Catholicks; and to pay the ſame to Lionel, Earl of Orrery, purſuant to a Grant of Charles II. to Roger Earl of Orrery.

A Grant to John Yeard, of the Profits of the Deanery of Aechory and Chanterſhip of Killala, from the Time of their being vacant.

A Grant of ſeveral Parcels of Land, valued at 35 l. *per Ann.* to Dorothy Baroneſs Dowager of Upper Oſſory for Life.

A Grant to G. Fitzgerald of 200 l. *per Annum* in Conſideration of his ſurrendering the Office of Comptroller of the Muſters.

A Grant of ſeveral forfeited Lands ſpecified in a Schedule, of the clear Yearly Value of 679 l. 7 s. 1 d. to the Earl of Rochford and his Heirs.

A Grant to Sir Edward Biron of certain forfeited Lands valued at 104 l. 3 s. 8 d. *per Annum.* for the Term of 99 Years.

A Grant to John Butcher of certain Quit and Crown Rents, valued at 883 l. 9 s. *per Annum* for 99 Years.

A Grant to Thomas Pendergraſs, his Heirs and Aſſigns for ever, of ſeveral forfeited Lands of the clear Yearly value of 334 l. 0 s. 2 d. ½ to make good the Deficiency of a former Grant for 500 l. a Year.

A Grant to James Puiſſar, and his Heirs for ever, of ſeveral forfeited Lands of the clear Yearly value of 341 l. 14 s. 6 d. ½, likewiſe to make good the Deficiency of a former Grant.

A

A Grant to Colonel Hamilton of certain forfeited Lands of the clear Yearly value of 500 l. 8 s. 6 d. ½. Anno 11 W. III. 1699.

A Grant of the Cuſtody of certain forfeited Lands belonging to Sir Drury Wray, to his Son Chriſtopher Wray Eſq; during the Life of his Father.

A Grant to Dr. John Leſlie, of the Inheritance of ſeveral forfeited Lands to the value of 400 l. *per Annum*, which were before granted him for 99 Years.

A Grant to Thomas Lord Coningesby, for the Offices of Vice-Treaſurer, General-Receiver, Pay-Maſter General, and Treaſurer at War, with the Yearly Fee of 60 l. 13 s. 4 s. Sixpence in the Pound in all Payments made by him or his Deputies, during Pleaſure.

A Diſcharge to Sir Richard Bellingham of the Remainder of a Debt of 2000 l. and Intereſt.

A Warrant for allowing and diſcharging to William Griffith, the Collector of Sligo, the Sum of 894 l. 13 s. 7 d. ¼, which he was robbed of.

A Grant of the forfeited Eſtate of Sir Neill Oneile, to Dame Frances Oneile for 41 Years.

A Grant to Richard Fitzpatrick Eſq; of all the forfeited Eſtate of Barnaby Lord of Upper Oſſory, valued at 60 l. *per Annum*, and ſubject to the Payment of 35 l. *per Annum* to Dorothy Lady Dowager of Upper Oſſory, for Life.

A Grant or Demiſe to Major-General Stewart, in Conſideration of a Releaſe of 3537 l. 12 s. 8 d. due to him on account of his Regiment, the Loſs of his Right Arm, and other Loſſes; certain forfeited Eſtates of the clear Yearly value of 751 l. 18 s. 5 d. ¾ for 99 Years.

A Grant to John Ellis Eſq; his Heirs and Aſſigns for ever, of the forfeited Eſtate of his Brother Sir William Ellis, from whom there was due to the ſaid John Ellis 1200 l. and Intereſt; the ſaid Eſtate was otherwiſe much encumbered

A Diſcharge to the Viſcount Lanesborough of 162 l. 7 s. 10 d. ½ due for Quit Rents.

A Warrant to leaſe out the Eſtates of Sir Valentine and Sir Nicholas Browne, at the beſt improved Value for 21 Years, and out of the Produce to pay to the Earl of Bellamont 1000 l. a Year, (which by virtue of a former Grant, was charg'd to be paid out of the ſaid Eſtate, to the ſaid Earl for 999 Years,) and 400 l. more to Helen Viſcounteſs Kenmure, for the Support of herſelf and Children.

The ſame Day the Earl of Ranelagh delivered a Meſſage from the King to the Houſe, which was all writ by his Majeſty's own Hand, as follows:

'WILLIAM R.

'His Majeſty is pleaſed to let the Houſe know, that the 'neceſſary Preparations are made for tranſporting the 'Guards who came with him into England; and that he 'intends

The King's Meſſage to the Commons.

Anno 11 W. III. 1699.

'intends to ſend them away immediately, unleſs, out of Con-
'ſideration to him, the Houſe be diſpoſed to find a way for
'continuing them longer in his Service, which his Majeſty
'would take very kindly.'

Upon reading this Meſſage, the queſtion was put, 'That a Day be appointed to conſider of his Majeſty's ſaid Meſſage;' but it was carried in the Negative, and reſolved, 'That a Committee be appointed to draw up an humble Addreſs, to be preſented to his Majeſty, repreſenting the Reaſons why the Houſe cannot comply with the purport of his Majeſty's Meſſage this Day communicated to the Houſe.' And this * Addreſs was accordingly prepared, as follows, and delivered on the 24th.

The Commons Addreſs.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in this preſent Parliament aſſembled, do, with unfeigned Zeal to your Majeſty's Perſon and Government, (which God long preſerve) moſt humbly repreſent to your Majeſty,

'That the paſſing the late Act for disbanding the Army, gave great Satisfaction to your Subjects; and the readineſs your Majeſty has expreſſed by your Meſſage, to comply with the punctual execution thereof, will prevent all Occaſions of diſtruſt or jealouſy between your Majeſty and your People.

'It is, Sir, to your loyal Commons an unſpeakable Grief, that your Majeſty ſhould be adviſed to propoſe any thing in your Meſſage, to which they cannot conſent, with due Regard to that Conſtitution your Majeſty came over to reſtore, and have ſo often expoſed your Royal Perſon to preſerve, and did in your gracious Declaration promiſe, that all thoſe foreign Forces which came over with you, ſhould be ſent back.

'In duty therefore to your Majeſty, and to diſcharge the Truſt repoſed in us, we crave leave to lay before you; that nothing conduceth more to the Happineſs and Welfare of this Kingdom, than an entire Confidence between your Majeſty and your People; which can no way be ſo firmly eſtabliſhed, as by entruſting your ſacred Perſon with your own Subjects, who have ſo eminently ſignalized themſelves on all Occaſions, during the late long and expenſive War.'

His Majeſty's Anſwer was as follows:

'Gentlemen, I came hither to reſtore the ancient Con-
'ſtitution of this Government. I have had all poſſible Re-
'gard

* *When the Addreſs was firſt read, a Motion was made, to recommit it; which paſs'd in the Negative, Yeas* 156. *Noes* 175. *After which, another Motion being made, to leave out the Words (and did in your gracious Declaration promiſe, that all thoſe foreign Forces which came over with you, ſhould be ſent back) the Queſtion was put, That the ſaid Words do ſtand as Part of the Addreſs, and paſs'd in the Affirmative, Yeas* 163. *Noes* 157.

'gard to it ſince my coming, and I am reſolved through the 'Courſe of my Reign, to endeavour to preſerve it entire in 'all the Parts of it. Anno 12 W. III. 1699.

'I have a full Confidence in the Affections of my People, 'and I am well aſſured, they have the ſame in me; and I 'will never give them juſt Cauſe to alter this Opinion.

'As to my Subjects who ſerved during the War, I am an 'Eye-Witneſs of their Bravery, and of their Zeal for my 'Perſon and Government; and I have not been wanting to 'expreſs my Senſe of this to my Parliament as well as upon 'other Occaſions.

'I have all the reaſon to truſt and to rely upon them 'that a Prince can have; and I am ſatisfied, there is not one 'Perſon among them capable of entertaining a Thought, that 'what was propoſed in my Meſſage, proceeded from any 'diſtruſt of them.

'It ſhall be my ſtudy to the utmoſt of my power, to per-'form the part of a juſt and a good King: And as I will 'ever be ſtrictly and nicely careful of obſerving my Pro-'miſe to my Subjects, ſo I will not doubt of their tender Re-'gards to me.'

This Anſwer, though it could not but pleaſe, yet it would not move the Commons from their Reſolutions; ſo that the Dutch Guards were ſoon after ſhipped off for Holland: Which, though it ſeemed to weaken his Majeſty in his Military Defence and Safety, yet it ſtrengthened his Intereſt in the Hearts of all good Subjects, who ſaw now in an extraordinary Inſtance, that the King could deny himſelf any thing to oblige his People.

The ſame Day likewiſe, his Majeſty gave the Royal Aſſent to *An Act to prevent the exceſſive diſtilling of Spirits from Corn*, &c. *An Act to enlarge the Trade to Ruſſia. An Act to prevent irregular Returns of Members to ſerve in Parliament*; and to ſeveral private Acts. Royal Aſſent given to ſeveral Acts.

The Editor of Torbuck's Edition tells us, nothing beſide, material, was tranſacted during this Seſſion; yet we think ourſelves oblig'd to mention what follows:

The Day before the Tranſactions relating to the Dutch Guards, the Queſtion being put that the Houſe do agree with the Committee of the whole Houſe upon the Supply, That more Bills of Credit be iſſued out of his Majeſty's Treaſury, which ſhall be current in all Branches of the public Revenue; it paſs'd in the Negative, Yeas 148, Noes 182. A Negative put on iſſuing more Bills of Credit from the Treaſury.

The 29th, purſuant to the Reſolutions of the Houſe, the following Addreſs was reported, agreed to, and order'd to be preſented to his Majeſty by the whole Houſe.

'Moſt gracious Sovereign,

'We your Majeſty's, *&c.* having taken into our ſerious Conſideration the State of the Navy, do moſt humbly repreſent to your Majeſty, 'That

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'That the Streights Squadron not ſailing till September laſt, was prejudicial to England, and a great Miſmanagement.

'That the Order made by the Commiſſioners of the Admiralty, September 12, 1695, giving Henry Prieſtman Eſq; an Allowance of ten Shillings *per Diem*, from the Date of his Commiſſion, as Commander in Chief before Sallee in 1684, till the Ship Bonadventure was paid off, over and above his Pay as Captain of the ſaid Ship, was very unreaſonable and a Miſapplication of the public Money.

'That the * Victualling any of his Majeſty's Ships by others than by the Victuallers appointed for that Service, or their Agents, is contrary to the Courſe of the Navy, and may be of ill conſequence.

'That many new and unneceſſary Charges have, in an extraordinary manner, been introduced into the Navy, contrary to the Rules of the Navy, which is a great Miſmanagement.

'That the Deductions of Poundage taken by the Pay-Maſters of the Navy, for Slop-Clothes, Dead Men's Clothes, Tobacco, Cheſt at Chatham, Chaplain and Surgeon, is without Warrant, and ought to be †accounted for.

'That it is inconſiſtent with the Service of the Navy, for the ſame Perſon to be one of the Commiſſioners for executing the Office of Lord High-Admiral and Treaſurer of the Navy at the ſame time.

'And that the paſſing any Account of Moneys impreſs'd for the contingent Uſe of the Navy, without regular Vouchers, or ſuch other Proof, as the Nature of the Service will admit, either with, or without a Sign Manual, is contrary to the Rules and Methods of the Navy, and of dangerous Conſequence.

'All which we beg leave to lay before your Majeſty, deſiring that you will be graciouſly pleas'd to ‖ take effectual Care that the Miſmanagements herein complain'd of may be prevented for the future.

His Majeſty's Anſwer.

His Majeſty's Anſwer was as follows:

'Gentlemen, I will conſider your Addreſs: It is my de-'ſire that all ſorts of Miſmanagements and Irregularities 'ſhould be prevented or redreſs'd; you may be aſſured I 'will

* *While this Article was under Debate, the following Words were offered to be added to it by way of Amendment (except only in Caſes of Neceſſity happening abroad) and paſs'd in the Negative, Yeas* 154, *Noes* 167.

† *Another Amendment was propos'd by leaving out theſe Words* (to be accounted for) *and inſerting in their ſtead,* not to be taken for the future; *but over-rul'd.*

‖ *An Objection being made to the Words* take Care, *the Queſtion was put, that the ſaid Words ſtand as Part of the Reſolution, and paſs'd in the Affirmative, Yeas* 164. *Noes* 160. *And when the Addreſs was reported, it was agreed that the ſaid Words ſhould be altered to* take effectual Care.

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'will take the beſt Care I can, in relation to the Navy; the 'right Management whereof, is of ſo great concern to the 'Kingdom.'

Tranſport-Accounts.

The 30th, the Accounts relating to the Tranſports were laid before the Houſe; whereby it appear'd, that there had been paid on that Service ——————— l. 100,107 8 5½
That there was ſtill due ——————— 441,637 9 5

And that the Caſh in the Office amounted to 9030 16 1

Navy-Debt.

April 1. Sir George Rook preſented to the Houſe, according to Order, a State of the Debt of the Navy, the Total of which appear'd to be 2,245,957 l. excluſive of what was due to Marines.

Certain Letters of Mr. Chivers a Member complain'd of.

The 5th, a Complaint was made to the Houſe of certain Letters written by Henry Chivers Eſq; a Member, as not only reflecting on, but miſrepreſenting ſeveral Members of the Houſe; which Letters are as follow:

'Dear Will. London January 5. 1698.

Yeſterday we had a great Conteſt in the Houſe, concerning augmenting the Forces; in which my Brother Member ſignaliz'd himſelf for the Good of his Country. He made a very violent Speech for keeping up more Forces than the Senſe of the Houſe was for; ſo that we poor Country-Gentlemen were forc'd to labour hard, and ſit late to overcome them: I do really believe he will never give his Country one Vote, he is ſo link'd in with the Court-Party. If you pleaſe, you may communicate this to your Friends, and let them know that I ſhall always be ready to ſerve both them and you, here and elſewhere. So I remain

Your Humble Servant
to command,

For Mr. William Wilks
in Calne, Wiltſhire.

Henry Chivers.

'Dear Brother, London February 5. 1698.

I Have ſent you his Majeſty's Speech, and a Liſt of thoſe Gentlemen who voted for a ſtanding Army. The Queſtion was whether the Army ſhould ſtand, or the Bill be thrown out: But God be prais'd we carried it. The Number for disbanding the Army was 221, and the Liſt will ſatisfy you how many were againſt it. So I remain

Your Servant
to command,

To Mr. John Hoskins
at Calne.

Henry Chivers.
Theſe

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These Letters being read, Mr. Chivers was ordered to attend in his Place, but pleaded Indisposition by way of Excuse: Upon which, a Motion being made for him to attend the next Day notwithstanding, it was carried in the Affirmative, Yeas 119. Noes 83. But he not obeying the said Summons, the Question was put, that he be sent for in Custody of the Serjeant at Arms, and pass'd in the Negative, Yeas 99. Noes 134.

Upon the whole, the House came to the following Resolution:

Vote thereon.

Resolved, That the publishing the Names of the Members of this House, and reflecting upon them, and misrepresenting their Proceedings in Parliament, is a Breach of the Privilege of this House, and destructive of the Freedom of Parliament.

List of General Officers.

The 4th, a List of General Officers was presented to the House, consisting of three Generals of Horse, at 6 l. a Day; seven Lieutenant-Generals, at 4 l. a Day; eight Major-Generals, at 2 l a Day; and eleven Brigadier-Generals, at 1 l. 10 s. a Day; at which Rates the Total *per Ann.* amounted to 29,382 l. 10 s.

Pensions on the Royal-Oak Lottery.

The 17th, by an Account presented to the House, of Pensions paid out of the Royal-Oak Lottery, it appeared that no less than 3950 l. *per Annum* was charg'd on that iniquitous Game.

Commissioners for the taking an Account of the forfeited Estates in Ireland.

The 21st, the House proceeded to the Choice of seven Commissioners for taking an Account of the forfeited Estates in Ireland by Ballot, when the Numbers stood thus.

Francis Annesly Esq;	222
Henry Earl of Drogheda	220
John Trenchard Esq;	208
James Hamilton Esq;	158
Henry Langford Esq;	136
Sir Richard Leving	127
Sir Francis Brewster	122

Bill of Supply pass'd.

The 23d, the Bill for granting his Majesty the Sum of 1,484,015 l. was read the third Time, pass'd, and order'd up to the Lords for their Concurrence.

Resolutions on the Petition of Russel against Gwynn.

May 2. the House agreed with the Committee appointed to examine the Petition of John Russel Gent against Daniel Gwynn, in the following Resolutions, *viz.*

That the said Daniel Gwynn, Agent for the Spanish Expedition and Alliance Packet-Boats, hath been guilty of false Musters.

That the said Gwynn, being likewise Collector of the Customs and Excise, hath frequently imported great Quantities of Salt, on board the said Packets, without paying either Custom, or Excise, and charg'd the same to the King, as if he had paid both.

That he hath been guilty of ſeveral notorious Frauds in victualling the ſaid Packet. Anno 11 W. III. 1699.

That he hath been guilty of divers Extortions from the Sailors and others.

That for the ſaid Offences, he is not fit to be continued or employ'd in any Place under the Government.

Ordered, That Mr. Attorney-General do proſecute the ſaid Daniel Gwynn for the ſaid Offences.

The 4th, the King came to the Houſe of Peers, and paſs'd ſeveral Bills, as, *An Act for raiſing* 1,484,015 l. *for diſbanding the Army*, &c. *An Act to lay Duties upon Sweets*; *An Act for encouraging the Newfoundland-Trade*; *An Act for preventing the Exportation of Wool*; *An Act againſt Burglaries. For a free Market at Billinſgate*; *for ſuppreſſing of Lotteries*; *for the more effectual charging the Duties upon Rock-Salt*: *An Act for limiting certain Times within which Writs of Error ſhall be brought for the reverſing of Fines*, &c. *another Tithe-Act*; *An Act for taking off the remaining Duty upon Glaſs-Ware*; *An Act to enable Poſthumous Children to take Eſtates as if born in their Fathers' Life-Time*; *An Act for the Impriſonment of Counter, and others, for the Aſſaſſination Plot*; and a great many private Acts. Royal Aſſent given to ſeveral Acts.

After which his Majeſty was pleaſed to make the following Speech.

'My Lords and Gentlemen,

'AT the Opening of this Parliament, I told you my Opinion was, that you were come together with Hearts fully diſpos'd to do what was neceſſary for the Safety, Honour, and Happineſs of the Kingdom; and having nothing elſe to recommend to you, I had reaſon to hope for Unanimity and Diſpatch. King's Speech.

'You have now ſat ſo many Months, that the Seaſon of the Year, as well as your particular Affairs, make it reaſonable you ſhould have a Receſs. I take it for granted, you have finiſh'd all the Bills, which for the preſent you think requiſite to be paſs'd into Laws: And I have given my Aſſent to all you have preſented to me.

'If any thing ſhould be found wanting for our Safety, the Support of Public Credit, by making good the Faith of the Kingdom, as it ſtands engag'd by Parliamentary Securities, and for diſcharge of the Debts occaſion'd by the War, or towards the advancing of Trade, the ſuppreſſing of Vice, or the employing of the Poor; which were all the things I propos'd to your Conſideration when we met firſt, I cannot doubt but effectual Care will be taken of them next Winter: and I wiſh no Inconveniencies may happen in the mean time.'

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Then the Lord Chancellor prorogu'd the Parliament till the first of June.

The Second Session of the 4th Parliament.

The Parliament met at Westminster on Thursday the 16th of November, and his Majesty with the usual Solemnity made this Speech to both Houses.

King's Speech.

'My Lords and Gentlemen,

'I Hope you will not think I have called you out of your 'Countries too soon, if you consider, that our common 'Security requires a farther Provision should be made, for 'the Safety of the Kingdom by Sea and Land, before we are 'at the end of what was granted for that purpose last Session. 'and when you enter upon this Business, I believe you will 'think it necessary to take care of the Repairs of the Ships 'and of the Fortifications; without which our Fleet cannot 'be safe when it is in Harbour.

'I cannot omit to put you in mind of another matter, in 'which so great a Number of my Subjects is concerned, and 'wherein the Honour of the Kingdom, and the Faith of 'Parliaments is so far engaged, that our future Security 'seems to depend upon it; I mean, the making good Defi-'ciencies of the Funds, and the discharging the Debts con-'tracted by reason of the War.

'And till we may be so happy as to see the public Debts 'paid, I shall hope that no Session will end, without some-'thing done towards lessening them. While I am speaking 'to you on this Head, I think myself obliged to mention, 'with a particular concern, a Debt which is owing to the 'Prince of Denmark, the state whereof I have ordered to be 'laid before you.

'Gentlemen of the House of Commons,

'These things are of such Importance, that I must earn-'estly recommend them to your Consideration, and desire 'you to provide the necessary Supplies.

'My Lords and Gentlemen,

'There is nothing I could more rejoice in, than that I 'were not under the necessity of so often asking Aids of my 'People; but as the Reason of it is evident, because the 'Funds formerly applied to defray the Public Expence, are 'now anticipated for Payment of the Debts of the Kingdom; 'so it is my Satisfaction, that you all see that nothing of 'what is demanded, is for any personal use of mine: And I 'do faithfully assure you, that no part of what is given, shall 'be diverted from any Purpose for which it is designed.

'I believe the Nation is already sensible of the good Ef-'fects of Peace, by the manifest Increase of Trade, which I 'shall make it my Business to encourage by all means in my 'power; probably it might receive an Advantage, if some

good

'good Bill were prepared, for the more effectual preventing and punishing unlawful and clandestine trading, which does not only tend to defraud the Public, but prejudice the fair Merchant, and discourage our own Manufactures. Anno 11 W. III. 1699.

'The Increase of the Poor is become a Burthen to the Kingdom, and their loose and idle Life, does in some measure contribute to that depravation of Manners, which is complained of, (I fear with too much Reason.) Whether the ground of this Evil be from defects in the Laws already made, or in the Execution of them, deserves your Consideration. As it is an indispensable Duty, that the Poor, who are not able to help themselves, should be maintained; so I cannot but think it extremely desireable, that such as are able and willing, should not want Employment; and such as are obstinate and unwilling, should be compelled to labour.

'My Lords and Gentlemen,

'I have a full Assurance of the good Affections of my People, which I shall endeavour to preserve by a constant care of their just Rights and Liberties; by maintaining the established Religion, by seeing the Course of Justice kept steady and equal, by countenancing Virtue, and discouraging Vice, and by declining no Difficulties or Dangers, where their Welfare and Prosperity may be concerned. These are my Resolutions; and I am persuaded that you are come together with Purposes on your part suitable to those on mine. Since then our Aims are only for the general Good, let us act with Confidence in one another; which will not fail, by God's blessing, to make me a happy King, and you a great and flourishing People.'

The House, having taken this Speech into Consideration, agreed upon the following Address.

The Commons Address.

'Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled being highly sensible, that nothing is more necessary for the Peace and Welfare of this Kingdom, the quieting the Minds of your People, and disappointing the Designs of your Enemies, than a mutual and entire Confidence between your Majesty and your Parliament, do esteem it our greatest misfortune, that after having so amply provided for the Security of your Majesty and your Government, both by Sea and Land, any Jealousy or Distrust hath been raised, of our Duty and Affections to your sacred Majesty and your People; and beg leave humbly to represent to your Majesty, that it will greatly conduce to the continuing, and establishing an entire Confidence between your Majesty and your Parliament, that you would

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be pleaſed to ſhew marks of your high diſpleaſure towards all ſuch Perſons who have, or ſhall preſume to miſrepreſent their Proceedings to your Majeſty.

'And your Commons (having likewiſe a due Senſe of the great Care and Concern, your Majeſty has always expreſſed, for preſerving and maintaining the Religion, Rights, and Liberties of your People, in defence of which your Majeſty hath ſo often expoſed your Royal Perſon) will uſe their utmoſt care and endeavours, to prevent and diſcourage all falſe Rumours and Reports, reflecting upon your Majeſty and your Government, whereby to create any Miſunderſtandings between you and your Subjects.'

To this his Majeſty was pleaſed to give the following Anſwer.

King's Anſwer.

'Gentlemen, My Parliament have done ſo great things 'for me, and I have upon all proper Occaſions expreſſed ſo 'great a Senſe of their Kindneſs, and my Opinion has been 'ſo often declared, that the happineſs of an Engliſh King 'depends upon an entire good Correſpondence between him 'and his Parliament, that it cannot ſeem ſtrange for me to 'aſſure you, that no Perſons have ever yet dared to go 'about to miſrepreſent to me the Proceedings of either 'Houſe. Had I found any ſuch, they would have immediately felt the higheſt Marks of my Diſpleaſure. It is a 'Juſtice I owe not only to my Parliaments, but to every 'one of my Subjects, to judge of them by their Actions: 'And this Rule I will ſteadily purſue. If any ſhall hereafter attempt to put me on other Methods, by Calumnies or 'Miſrepreſentations, they will not only fail of Succeſs, but 'ſhall be looked upon, and treated by me as my worſt 'Enemies.

'Gentlemen,

'I am pleaſed to ſee by your Addreſs, that you have the 'ſame Thoughts of the great Advantages which will enſue 'to the Kingdom, from our mutual Confidence, as I expreſſed to both Houſes at the opening of the Seſſion. I 'take very kindly the aſſurance you give me, of uſing your 'utmoſt care and endeavour to prevent and diſcourage all 'falſe Rumours and Reports reflecting upon me and my 'Government: And I faithfully promiſe you, that no Actions 'of mine ſhall give a juſt ground for any miſunderſtanding 'between me and my People.

Motion with regard to Lord Bellamont.

December 6th, it appearing to the Houſe that a Grant had been made by Letters Patent to the Earl of Bellamont and others, of Pirates Goods; the Queſtion was put, that the ſaid Letters Patent were diſhonourable to the King, againſt the Law of Nations, contrary to the Laws and Statutes of the Realm, an Invaſion of Property, and deſtructive of Trade and Commerce, and paſs'd in the Negative.

The

The moſt material Buſineſs that occurr'd next in the Houſe, was the Report of the Commiſſioners for taking an Account of the Forfeited Eſtates in Ireland; an Abſtract of which is as follows. Anno 11 W. III. 1699.

Report of the Commiſſioners for taking an Account of the Iriſh Forfeited Eſtates.

The Commiſſioners met with great Difficulties in their Enquiry, which were occaſioned chiefly by the Backwardneſs of the People of Ireland to give any Information, out of fear of the Grantees, whoſe Diſpleaſure in that Kingdom was not eaſily borne; and by Reports induſtriouſly ſpread and believed, that their Enquiry would come to nothing. Nevertheleſs, it appeared to them, that the Perſons outlawed in England, ſince the 13th of February, 1688. on account of the late Rebellion, amounted in number to fifty ſeven, and in Ireland to three thouſand nine hundred and twenty one. That all the Lands in the ſeveral Counties in Ireland belonging to the forfeited Perſons, as far as they could reckon, made 1060792 acres, worth *per annum* 211623 l. which by computation of ſix years purchaſe for a Life, and thirteen years for the Inheritance, came to the full value of 2685138 l. That ſome of thoſe Lands had been reſtored to the old Proprietors, by virtue of the Articles of Limerick and Galloway, and by his Majeſty's Favour, and by Reverſal of Out-lawries, and royal Pardons, obtained chiefly by Gratifications to ſuch Perſons as had abuſed his Majeſty's royal Bounty and Compaſſion. Beſide theſe Reſtitutions, which they thought to be corruptly procured, they gave an Account of ſeventy-ſix Grants and Cuſtodiums, under the Great Seal of Ireland; as to the Lord Romney three Grants now in being, containing 49517 Acres; to the Earl of Albemarle in two Grants 108633 Acres in Poſſeſſion and Reverſion; to William Bentinck Eſq; Lord Woodſtock, 135820 Acres of Land; to the Earl of Athlone two Grants containing 26480 Acres; to the Earl of Galloway one Grant of 36148 Acres, *&c.* wherein they obſerved, that the Eſtates ſo mentioned did not yield ſo much to the Grantees as they were valued at; becauſe as moſt of them had abuſed his Majeſty in the real Value of their Eſtates, ſo their Agents had impoſed on them, and had either ſold or lett the greateſt Part of thoſe Lands at an Under-Value. But after all Deductions and Allowances, there yet remained 1699343 l. 14 s. which they lay before the Commons as the groſs Value of the Eſtates ſince the 13th Day of February, and not reſtored; beſides a Grant under the Great Seal of Ireland, dated the 13th Day of May, 1695. paſſed to Mrs. Elizabeth Villiers, now Counteſs of Orkney, of all the private Eſtates of the late King James, (except ſome ſmall Part in Grant to the Lord Athlone) containing 95649 Acres, worth *per Annum* 25995 l. 18. s. Value, total 331943 l. 9. s. Concluding, that there was payable out

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of this Eſtate, two thouſand Pounds *per annum* to the Lady Suſanna Bellaſis, and alſo one thouſand Pounds *per annum* to Mrs. Godfrey, for their Lives; and that almoſt all the old Leaſes determined in May 1701. and then this Eſtate would anſwer the Value above-mentioned.——Signed Francis Anneſley, John Trenchard, James Hamilton, and Henry Langford.

A Bill for applying the Forfeited Eſtates in Ireland to the Uſe of the Public.

The Commons having examined this Report, came to an unanimous Reſolution, 15th of December, that a Bill be brought in *to apply all the forfeited Eſtates and Intereſts in Ireland, and all Grants thereof, and of the Rents and Revenues belonging to the Crown within that Kingdom, ſince the 13th of February* 1688, *to the Uſe of the Public*; and ordered a Clauſe to be inſerted in that Bill, *for erecting a Judicature for determining Claims touching the ſaid forfeited Eſtates.* They likewiſe reſolved, That they would not receive any Petition from any Perſon whatſoever, touching the ſaid Grants or forfeited Eſtates; and that they would take into Conſideration the great Services performed by the Commiſſioners appointed to enquire into the forfeited Eſtates of Ireland.

Jan. 15. A Motion being made that the four Commiſſioners, who had ſigned the Reports, preſented to this Houſe, had proceeded in the Execution of that Commiſſion with Underſtanding and Integrity; a Debate aroſe thereon, which was adjourned 'till the next Day, when it was reſum'd; when ſix of the ſaid Commiſſioners were examined as follows.

Examination of the [illegible] Commiſſioners.

Sir Richard Leving firſt by himſelf.

Mr. *Speaker.* Sir Richard Leving, The Houſe having been inform'd of ſomething that you have ſaid to a worthy Member of this Houſe (which I am confin'd to examine you to) I may name the Perſon, becauſe you have ſaid it, as the Houſe is inform'd, to more than one: The Member's Name is Vernon, and it is in relation to ſome Diſcourſe that paſſed between you and one or more of the Commiſſioners for the Iriſh Forfeitures concerning the private Eſtate being put into the Report. The Houſe requires you to give an Account of what you informed that worthy Member.

Sir *Richard Leving.* Mr. Speaker, I ſhall very readily obey the Commands of the Houſe; but, before that, I would inform you (if it be the Pleaſure of the Houſe) of all that then paſſed.

Mr. *Speaker.* Pray take your own Method, give an Account of what you know.

Sir *Richard Leving.* There was a Debate aroſe between the Commiſſioners concerning the reporting the private Eſtate: Upon that Debate I was of opinion, That that Eſtate ought not to have been reported, becauſe not within our Power

Power by the Act: Upon this a Debate happen'd, and ſeveral Reaſons were offer'd why this might be underſtood to be a Forfeiture; one Reaſon that was given was, that the Eſtate was the late King James's Eſtate, and ſo it was forfeited. To which anſwer was made, That if King James had forfeited it, yet it was not within the Act, becauſe the Words of the Act confin'd our Enquiry to Forfeitures ſince the 13th of February 1688. When that was ſaid, there was another of the Commiſſioners, that did ſay, I was always of Opinion that this was a Forfeiture within the Act, becauſe tho' King James had not forfeited before, yet he coming into Ireland on March 15, 1688. he committed Treaſon againſt King William and Queen Mary, and forfeited that Eſtate. It was then objected, That this private Eſtate of the late King was Parcel of the Poſſeſſions of the Crown of England, and was veſted in him as Parcel of the Crown of England; and the Crown being veſted in King William and Queen Mary by an Act of Parliament made in this Kingdom, which ſettled the Crown in King William and Queen Mary, the Crown and all the Poſſeſſions were veſted in them Feb. 13. 1688. So that that Eſtate being actually in his Majeſty then, and tho' otherwiſe it might have been conceiv'd that King James had forfeited afterwards, tho' not then attainted, it could not be conceived how he could forfeit that Eſtate becauſe it was before in the King and Queen. And the ſame Gentleman that urged, that upon the 15th of March King James landed in Ireland and committed Treaſon, was pleaſed to ſay, I don't diſlike the 30th of January, nor the Deed that was done that Day; I like both the Day and the Deed. I confeſs I was ſurpriz'd at it, and ſaid, If thoſe be your Reaſons, and this is your Agreement, I declare I will never join in it. Anno 11 W. III. 1699.

One of the Commiſſioners at this time was abſent, but the next day that Gentleman was brought into the Room with the other Commiſſioners, and then this was debated again, and upon that Debate much of that Matter was ſpoke over again (not that relating to the 30th of January) but then it was again urg'd, that that Eſtate might be ſaid to be forfeited; and the ſame Objections were repeated, and it ſeem'd to be aſſented to by the other Commiſſioners, that it was not ſtrictly a Forfeiture, and ſome of them ſaid it might not be within the Commiſſion; then it was ask'd, Why then will you report it? And one of the Gentlemen did anſwer, that it was a villanous Grant, and therefore fit to be expos'd: I did not write down the Words at that time, becauſe I had then no Intention of making any Complaint, or publiſhing theſe Matters. But ſince they have cut off our Hands and Seals from the Report, it made us think it neceſſary to do what we have done. And it being ſaid by a Commiſſioner not here, but in

Ireland,

Anno 11 W. III. 1699. Ireland, If we take it not to be within our Commiſſion, why will you report it? for it will fly in the King's Face: To which another anſwered, Why the Commiſſion flies in the King's Face; if you won't fly in his Face, you can't execute this Commiſſion, or you muſt not execute it, one of them two.

Upon this it was further urg'd, That this Matter ſhould be reported; and one of the Commiſſioners ſaid, Tho' it was not clearly within the Act, yet he had receiv'd ſeveral Letters from ſeveral Members of this Houſe to report this Matter, and he ſaid it was as good (or contain'd in the Letter, that it was as good) do nothing as not to report it. There was upon this an Expreſſion by one of the Commiſſioners, that a great Perſon was concern'd [that was my Lady *Ork--y*] and the Application of that was, that if he was ſo tender of that Perſon, we ſhould not join with them in any thing elſe: For, Sir, the Debate was grown to this paſs, whether if we did not join in this thing, we ſhould not join in any thing elſe. This I think is the Subſtance of what I told that worthy Member: if I am ask'd as to any other Perſon, I ſhall give you a true Account.

Mr. *Speaker*. I am commanded to ask you, who were by upon this Diſcourſe between you and the reſt of the Commiſſioners concerning the Differences in Opinion, and how many; and particularly at that time that one of the Commiſſioners did ſay, that he thought that ſince it was not in your Commiſſion to report that Grant, it would be a flying in the King's Face, *&c.*

Sir *Richard Leving*. It was the day that the Commiſſioner that was ſick firſt came to us, I believe about the 24th of October laſt: There were preſent at that time the Lord Drogheda, Sir Francis Brewſter, Mr. Anneſly, Mr. Trenchard, Mr. Hamilton, Mr. Langford, the Secretary, and myſelf, all were in the Room when this was ſaid.

Mr. *Speaker*. Who was it ſaid it was a flying in the King's Face? and who made anſwer that the Commiſſion did fly in the King's Face?

Sir *R. Leving*. It was my Lord Drogheda ſaid the firſt part, and Mr. Hamilton was the Perſon that ſaid the other.

Mr. *Speaker*. Who ſaid that concerning the 30th of January, that it was a good Day and a good Deed?

Sir *R. Leving*. That was the day before the other Diſcourſe was; there were all but Mr. Trenchard, who was ſick and came next day.

Mr. *Speaker*. Who ſaid it, and upon what Occaſion?

Sir *R. Leving*. It was not a particular Direction to any Perſon as I remember; but it was ſpoke by way of Anſwer: It was told Mr. Langford when he came in, the Objection that

that was made againſt this being return'd as a Forfeiture, &c. And then he ſaid, I was always of Opinion that this was a Forfeiture, and that Kings might forfeit as well as others; and he thereupon ſaid he did not diſlike the 30th of January. Anno 11 W. III. 1699.

Mr. *Speaker*. You mention'd that ſome of the Commiſſioners ſaid they receiv'd Letters from Members of Parliament to inſert this Grant into the Report: Pleaſe to repeat who had them, and from whom?

Sir *R. Leving*. The firſt time I heard mention of any ſuch Letter was the firſt Night: After we roſe we went to Mr. Trenchard's Chamber, who was ſick, to conſult; for this Debate occaſion'd ſome concern in our Minds, and we did apprehend ſome Breach amongſt us, and went to his Chamber to ſee if we could come to an Accommodation; and offer'd Mr. Trenchard, and the reſt of the Gentlemen preſent, That if they would take the whole Report without the private Eſtate, and ſign it, we could join with them; and if they would put in an Article of the private Eſtate, they might ſign it by themſelves: for we thought if we could not agree to it, we would be no hindrance to them if they thought fit to do it; and then Mr. Trenchard ſaid, he had Letters from ſeveral Members to report this private Eſtate, and that it would ſignify nothing if we did not report it.

Mr. *Speaker*. Did he ſay that from himſelf, or that it was in any Letter?

Sir *R. Leving*. I do not ſay that poſitively, he ſhew'd me no Letter.

Mr. *Speaker*. Did he name any Member?

Sir *R. Leving*. I do not remember that he named any Member.

Mr. *Speaker*. Who were preſent at that time in Mr. Trenchard's Chamber?

Sir *R. Leving*. Moſt of thoſe Gentlemen I have named were there the next day.

Mr. *Speaker*. Who were by?

Sir *R. Leving*. My Lord Drogheda and Sir F. Brewſter were not there, but the reſt were there, and the Secretary I believe was there. The next day, when we met again, there were preſent, as I inform'd you, all the Commiſſioners; and then Mr. Trenchard, amongſt other Diſcourſe, did expreſs himſelf in the ſaid manner; and Mr. Anneſly ſaid, that he had received Letters from Members of the Houſe.

Mr. *Speaker*. But Mr. Anneſly nor Mr. Trenchard did not tell you the Contents of thoſe Letters, nor from whom they receiv'd them.

Sir *R. Leving*. They ſaid they had Letters to report this Eſtate, but they did not as I remember name any body, tho'

Anno 11 W. III. 1699. I did hear from my Lord Drogheda and Sir Francis Brewſter, that they had named Perſons, but I did not myſelf take particular Notice of any body.

Mr. *Speaker*. Did they produce any Letter, or ſhew you any?

Sir *R. Leving*. Not then.

Mr. *Speaker*. When did you ſee any?

Sir *R. Leving*. I did ſee a Letter the next Morning, and that Letter was ſhew'd to me by Mr. Anneſly, but I did not think that Letter came up to the Point they ſpake overnight.

Mr. *Speaker*. Can you remember the Contents of it?

Sir *R. Leving*. I had rather refer myſelf to the Letter; I believe Mr. Anneſly has it.

Mr. *Speaker*. Who wrote it?

Sir *R. Leving*. Muſt I name him?

Mr. *Speaker*. Yes, the Houſe expects it of you.

Sir *R. Leving*. His Name is Mr. Arthur Moore: And I did then take notice of it to Mr. Anneſly, that this Letter did not amount to what they told us the Night before.

Mr. *Speaker*. You ſay you ſaid to Mr. Anneſly, you told us of a Letter you receiv'd from ſome Members to report this private Eſtate, but this Letter does not come up to what you told us. Upon which Mr. Anneſly anſwered as for himſelf, If we do not report that private Eſtate, we had as good do nothing.

Sir *R. Leving*. I don't ſay ſo: Upon recollection, I do now believe that thoſe Gentlemen, Mr. Trenchard and Mr. Anneſley, did ſay that there was contain'd in the Letter that Expreſſion, that if they did not put that Eſtate into the Report, they had as good do nothing; but when I once ſaw that Letter, I thought they had impoſed upon us.

Then Sir R. Leving withdrew, and all the reſt of the Commiſſioners that were then in Town, with their Secretary, were order'd to be brought in.

And accordingly Sir Francis Brewſter, Mr. Anneſly, Mr. Trenchard, Mr. Langford, and Mr. Hooper their Secretary were brought in.

Mr. *Speaker*. Gentlemen, I am commanded to enquire of you, and if you pleaſe you may ſpeak ſeverally to it: The Houſe has been inform'd of ſome Diſcourſes among you Gentlemen of this Commiſſion, when you differed in Opinion about returning of King James's private Eſtate; the firſt time Mr. Trenchard was not there, and the next day that Mr. Trenchard was brought there: but I think the Diſcourſe the Houſe would enquire after was the ſecond day when Mr. Trenchard was there, which was to this Effect, That ſome Argument being given why this Eſtate was a Forfeiture,

and other Arguments being given that it was not, one of the Commiſſioners, as this Houſe hath been inform'd, ſhould ſay, If it be not within our Commiſſion, 'tis a flying in the King's Face. Upon which another Commiſſioner made anſwer, Why the Commiſſion itſelf flies in the King's Face; And for what are we ſent hither but to fly in the King's Face, or to that effect?

Members. No, no.

Mr. *Speaker.* I beg pardon if I miſtake, the Words were to this Effect: The Commiſſion flies in the King's Face; and if you will not fly in his Face, you muſt not, or you cannot execute this Commiſſion. You are all ſaid to be preſent when theſe Words were ſpoken; ſo you will pleaſe to give account ſeverally to the Houſe what paſſed upon this Occaſion, and what you remember of it. Sir Francis Brewſter, if you pleaſe.

Sir *Francis Brewſter.* I beg leave to ſay, I am ſorry for any Differences between us, and that we were as hearty as any in the Execution of this Commiſſion. But for the Matter of the Words now ſpoke of, there was ſome Diſcourſe concerning the reporting that private Eſtate: Sir R. Leving ſaid, it was not within our Enquiry. To which ſome Reply was made, Why if it was not within our Commiſſion, yet it might be fit to be reported. My Lord Drogheda made anſwer, If it be not within our Commiſſion, then it will be to fly in the King's Face to report it. Another then ſaid, The Commiſſion flies in the King's Face, and we can't act in this Commiſſion unleſs we fly in his Face; I think that was ſaid by Mr. Hamilton. Upon which ſome other Arguments went on to enforce the paſſing of it. At laſt ſome of the Commiſſioners ſaid they had a Letter from ſeveral Members of the Houſe of Commons, that gave them reaſon to believe they ſhould report this Eſtate: I think it was ſaid by Mr. Anneſly. Upon which Sir R. Leving made anſwer, I do not think theſe Gentlemen have changed their Minds, that was, that Forfeitures might be made by Kings: Upon which it was anſwer'd, You are miſtaken, a great many of your Friends are now come over to us; and they urged it ſtill more, and at laſt they ſaid they had had ſeveral Letters about it. I muſt confeſs I made anſwer, I know not whether you have had any Letter, I never had any: But I muſt needs ſay, If I had no other reaſon, I ſhould not ſign this Report, for I think I ought not to be directed by any private Member of the Houſe of Commons, and that no Letter ſhould prevail with me to do it; I am loth to name any one.

Mr. *Speaker.* The Houſe expects it.

Sir *F. Brewſter.* I think they nam'd Mr. Harcourt.

Mr. *Speaker.* Who named him?

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Sir *F. Brewſter.* Mr. Anneſly. He did not ſay in his Letter particularly, but did ſay ſomething to that purpoſe, that if we did not report the private Eſtate we had as good do nothing; and he ſaid it was ſo in the Letter.

Mr. *Speaker.* Was you at Mr. Trenchard's Chamber the firſt Night that he was not at the Commiſſion, the Night before he was brought thither?

Sir *F. Brewſter.* No, Sir, I was not.

Mr. *Speaker.* Mr. Anneſly, if you pleaſe, give an Account of what you know of this Matter: you hear to what the Houſe hath a mind to be inform'd; 'tis as to the Diſcourſe that happen'd amongſt you the Commiſſioners the two days you differ'd in Opinion concerning the inſerting of this Grant into your Report, and particularly as to the Words ſpoken by Mr. Hamilton, or what elſe you heard then.

Mr. *Anneſly.* Truly, Mr. Speaker, I never expected to have been call'd to an Account for any thing that was ſaid among the Commiſſioners in Ireland upon their Debates, or that any Gentleman in Commiſſion with us would have acted ſuch a Part here; otherwiſe I ſhould have been more obſervant thereof. But the particular Expreſſions which ſome of us are charged with by the Evidence now given, are of ſo extraordinary a Nature, that I could not eaſily have forgotten them; Flying in the Face of the King, is ſo great a Reflection, and ſo fooliſh an Expreſſion, that I think I could not have paſs'd it by without the Cenſure it deſerv'd. Sir, I do affirm to you upon my Reputation, my Credit and all that is dear to me, that I never heard the leaſt Reflection upon the King by any of the Commiſſioners, either in their Debates or otherwiſe, in execution of their Authority.

When I had the Honour to be appointed by you one of your Commiſſion, I naturally reflected upon the Part I was to act in it, the many Enemies I muſt in likelihood create upon a faithful diſcharge of my Duty, as well amongſt Men in Power, the Grantees, as the Purchaſers, and others claiming under them; of which I had ſome Knowledge, having been formerly in Ireland. However, I was reſolv'd, upon a very ſhort notice, not only to ſubject my own private Concerns to Diſappointments, but to diſpoſe of other Mens Buſineſs, with which in the way of my Profeſſion I was entruſted, to their beſt Advantage in my Abſence.

In diſcharge whereof I did act (and I hope it will appear I did ſo) with all imaginable Integrity. And it will be my hard Fortune, if after ſuch my Endeavours I ſhould fall under your Diſpleaſure.

And as to what is alledg'd with reſpect to Mr. Harcourt, I do not remember that I ever mention'd his Name upon any Debate at our Board, whereby to influence any Man in his

his Judgment; nor indeed upon any other Account except in private Converſation, by drinking his Health, and by expreſſing myſelf with that Gratitude which became me towards one whom I had receiv'd particular Obligations from, and deſerv'd well from me. Anno 11 W. III. 1699.

I never had any Letter from Mr. Harcourt, that took the leaſt notice of the private Eſtate, nor indeed that related to the Execution of our Commiſſion, except in one Letter he ſaid I might eaſily imagine with what Pleaſure he heard of the Succeſs of our Labours, and that he was glad to find by the Account I gave him, that the Forfeitures were likely to anſwer the End for which we were ſent over, and that was the only Letter I receiv'd from him during my ſtay in Ireland. Hearing abroad of ſuch a Letter being mention'd in the Houſe, I look'd all the Letters I receiv'd from any of the Gentlemen of this Houſe during my ſtay in Ireland; but I own I am very unwilling to produce the Letters of any Perſon who favour'd me with his Correſpondence, and do hope I ſhall not be oblig'd to it.

Mr. *Speaker*. For that you will have the further Pleaſure of the Houſe; but do you ſay you never heard of thoſe words of Flying in the King's Face, or that your Commiſſion did Fly in the King's Face?

Mr. *Anneſly*. From the time we firſt began to execute our Commiſſion, till our Power was determin'd, I never was abſent one Hour, I think I may ſay one Moment from Buſineſs; and I aſſure you I never heard thoſe Words, nor any thing like them, fall from any one of the Commiſſioners. As to the Debate among the Commiſſioners about returning the private Eſtate, ſome hot Words did paſs, and I will take Notice to you (if you pleaſe) of ſome of them.

The Gentleman on my Left-hand did give very abuſive Language to one of the other Commiſſioners.

Mr. *Speaker*. To whom?

Mr. *Anneſly*. To Mr. Trenchard.

Another of the Commiſſioners ſaid, he would battle it with us at the Bar of the Houſe of Commons.

Mr. *Speaker*. Who was that?

Mr. *Anneſly* That was my Lord Drogheda. Says Sir Francis Brewſter, I have as good Friends as you, meaning Mr. Trenchard, and we ſhall be as well heard there as you. Mr. Trenchard anſwer'd, I don't fear what you can do, if you won't be an Evidence againſt me: The ill Language Sir Francis gave, forced that Expreſſion from him; the Reſentments were high, and the reſt of the Commiſſioners then preſent endeavour'd to pacify and make them Friends. I own I then little ſuſpected that Sir Francis, who took the Expreſſion ſo ill, would have made good Mr. Trenchard's Words

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Words at this Bar; if I had, I ſhould have taken more notice of what paſſed. There might be ſome other Particulars that Sir Francis Brewſter has charg'd us with, which I may have omitted anſwering; if you pleaſe, Sir, to remind me of them, I will give them the beſt Anſwer I can.

Mr. *Speaker*. Mr. Trenchard, if you pleaſe to give the Houſe an Account of what you know of this Matter?

Mr. *Trenchard*. I was preſent at the Debate about the private Eſtate, which was managed with great Warmth, and much ſaid on both ſides; but I do not remember one Word which this Gentleman ſpeaks of, that was directly ſo ſaid; I do own there were ſome Words that might give Umbrage to this Accuſation with thoſe that were reſolv'd to miſunderſtand them. The Occaſion was this: My Lord Drogheda, as I remember, or Sir Richard Leving ſaid, it would be Flying in the King's Face to report this Grant. Upon which one of the Commiſſioners reply'd; My Lord, We have heard too much of this Argument already, and 'tis time to have done with it; we were not ſent here to flatter, and if the enquiring into the Miſmanagement of the Forfeitures be a flying in the King's Face, then our whole Commiſſion is a flying in his Face. 'Tis not diſhonouring, but vindicating his Majeſty, to ſhew he has been abus'd by ill Men; and I doubt not but he will deſert them when he has diſcover'd it, as the beſt and wiſeſt Princes in all Ages have done. More than this I do affirm, upon the Reputation of a Gentleman, and the Word of an honeſt Man, was not ſaid whilſt I was at the Board.

Mr. *Speaker*. Who ſaid the Words you have repeated?

Mr. *Trenchard*. 'Twas I, Sir.

Mr. *Speaker*. You don't remember that Mr. Hamilton ſaid any thing as to the flying in the King's Face?

Mr. *Trenchard*. I do affirm that Mr. Hamilton, to the beſt of my Memory (and I think I could not miſtake it) did not ſay any Words relating to that Matter, more than that ſince we had enquired into the private Eſtate, and it was known in both England and Ireland, we ſhould be thought bribed and corrupt if we did not report it: But I am very ſure he ſaid no Words diſhonourable of his Majeſty; and if he had, I would have reſented it at that time, as I ſuppoſe theſe Gentlemen would have done, and call'd upon others to have taken notice of it.

Mr. *Speaker*. What Words did you hear ſaid in your Chamber?

Mr. *Trenchard*. A great Part of the Time I was in that Kingdom, I was confin'd to my Chamber being ſick, which I impute in a great meaſure to the Fatigue of our Commiſſion, during which time I had the Favour to be viſited ſometimes

times with ten or a dozen in an Evening, ſometimes twice the number of the People of the beſt Faſhion in that Country, and amongſt the reſt my own Brethren often oblig'd me with their Company; without doubt in this time many Subjects were diſcours'd of, but the Particulars of any one Diſcourſe I do not remember. I never treaſure up what is ſaid in private Converſation; and if I did, I ſcorn to tell it.

Mr. *Speaker*. Mr. Langford, you hear what the Gentlemen have given an Account of, 'tis of what paſſed between you about putting the private Eſtate into the Report, and whether upon my Lord Drogheda's ſaying it would be a Flying in the King's Face, Mr. Hamilton anſwer'd, Our Commiſſion flies in the King's Face?

Mr. *Langford*. I was preſent when this Debate happen'd about the private Eſtate, and it was with a great deal of Heat. It was objected by my Lord Drogheda, that it would be a Flying in the King's Face to report the private Eſtate, and was not in our Commiſſion. It was anſwer'd by Mr. Trenchard, we had that too often mention'd, to put us by the Execution of this Commiſſion; that we did not think the diſcovering Abuſes, a flying in the King's Face; but that, on the contrary, we ſhould do Service to his Majeſty to lay the Matter before him, that he might ſee how the Grants were diſpos'd of, and how he was deceiv'd in them; and he thought it was alſo neceſſary that both this Houſe and the Kingdom ſhould know it.

Mr. *Speaker*. What did Mr. Hamilton ſay?

Mr. *Langford*. I did not hear Mr. Hamilton ſpeak one Word relating to the King, on this Point.

Mr. *Speaker*. Do you know of any Letters from Members of this Houſe?

Mr. *Langford*. No, Sir, I had not the Honour to be acquainted with many Members; I had no Letter myſelf, nor did I ſee any.

Mr. *Speaker*. You are accus'd about Words of your own.

Members. Do not ask him to that.

Mr. *Speaker*. Mr. Hooper, you hear to what Purpoſe you are call'd in.

Mr. *Hooper*. Yes, I do, the whole Matter ſeems ſtrange to me; I have not been abſent from the Board, except when I was ſick at Limerick, one Hour during the whole Execution of this Commiſſion: Nor did I hear one Word ſpoken reflecting upon his Majeſty, unleſs the Inſinuation, that doing our Duty would be Flying in the King's Face, which I think was a great Reflection upon him; and I think Mr. Trenchard has very well repeated his own Words. I am ſure in Subſtance they are the ſame. I am confident there

was

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was no Letter produc'd whilſt I was at the Board, from any Member: And I believe by what Converſation I had with the four Commiſſioners, they never had any but what was fit to be produc'd; and for the Subſtance of what Mr. Anneſly and Mr. Trenchard have ſaid, I know it to be true. I never heard Mr. Hamilton ſpeak but with great Honour of the King; and I do poſitively aſſert, to the beſt of my Memory, he never ſaid any ſuch Thing, as is alledg'd againſt him, at the Board. I am confident I was preſent at all the Debates about the private Eſtate, and do remember the three diſſenting Commiſſioners did immediately declare themſelves againſt the inſerting it in the Report; three others that are preſent did as readily declare for it. So that Mr. Hamilton being in a manner ſolely left to determine this Matter, complain'd that it was a great Hardſhip upon him; for ſays he, my Lord Ork--y is my Relation and my Friend, and beſides I am a Tenant to the private Eſtate, and 'tis very ſevere that the Deciſion of this Matter ſhould lie upon me. He added, he ſhould be very well pleas'd if the Objection had been made ſooner, and perhaps it might have had more Weight with him; and truly, Mr. Speaker, it did not appear that there was one of the Commiſſioners for above five Months, but ſeem'd to be peremptory for the reporting it, and accordingly Sir Richard Leving, and Sir Francis Brewſter, join'd in the Examination of many Witneſſes to the Value of it at Limerick, and other Places, till about five days before the Power of the Commiſſion ceas'd, when I mov'd the Board that I might have ſome Direction about that Eſtate; and they made an Order that I ſhould immediately prepare the Report, and put this in it. And Mr. Hamilton gave this Reaſon when he join'd with the Commiſſioners, We have made ſo great a Noiſe about this Eſtate, by examining ſo many People to the Value, and ſending for the Rent-Rolls of it, that it is now the public Diſcourſe that it will be reported; and I know the World muſt needs ſay that we are bribed and corrupted if we do it not: If it was poſſible, I ſhould be glad to be excus'd; but I will rather loſe my Friend, I will rather loſe my little Eſtate, than be thought guilty of Bribery and Corruption, and ſo gave his Conſent to the reporting of it. And for the Words relating to Flying in the King's Face, I affirm they are falſe.

Sir *Francis Brewſter.* I deſire to ſpeak a few Words: You were pleas'd to ask me to give an Account of what paſs'd about the Words, Flying in the King's Face, and I find the Houſe expects I ſhould give an Account of the whole that paſs'd then: And I beg leave to ſay farther, that when the Debate was about the private Eſtate, and thoſe Words were ſaid about Flying in the King's Face, which my Lord Drogheda,

Drogheda, and others will take their Oaths of, and I believe Mr. Hamilton will not deny; at the ſame time this was ſaid by Mr. Trenchard, I heard you talk of flying in the King's Face, I hope 'tis not flying in his Face; but this I muſt tell you, 'tis a villainous Grant, and ought to be expos'd. Upon his ſpeaking ſo, Words aroſe, and that Gentleman gave me ill Language; but my Language was not ſo bad, but he was forced to beg my Pardon at the Board, and I did not his; there he ſtands, let him deny it if he can. Anno 11 W. III. 1699.

Mr. *Trenchard.* Sir, it is true, I did ask his Pardon, and the Occaſion was this, as Mr. Anneſly has acquainted you; I was provoked by his opprobrious Language to reply, I feared him in no Capacity but as an Evidence, which he took very heinouſly: He repeated the word Evidence; he ſaid 'twas below a Gentleman, below a Man of Honour, that ſuch a one ought to be ſhun'd by all civil Converſation, that I had better have ſtuck a Dagger in his Heart, than have called him an Evidence; which now I think, Mr. Speaker, he won't reſent ſo highly. This put the Board in great Diſorder, and one of the Commiſſioners whiſper'd to me (I think it was the abſent Member, but I am ſure all agreed in it) you know he is a very ſimple, old Fellow; and tho' he gave the Affront, you are in the wrong that you are capable of being angry with him. Truly, Sir, I was conſcious to myſelf that I was much to blame, to ſuffer myſelf to be provoked by him; and therefore, that the Debate might be interrupted no longer, I ask'd his Pardon. As to the other Part I am charg'd with, that I called the Grant of the private Eſtate a villainous Grant, I directly deny it. 'Twas poſſible I might ſay 'twas an extravagant Grant, an unreaſonable Grant, an unconſcionable Grant, that the King was impoſed upon and deceiv'd in this Grant, to give that for 5000 l. *per Ann.* which is worth between five and ſix and twenty thouſand. Theſe are Words that amount to it, and might fall from me, but that I uſed the Word villainous I poſitively deny; 'tis a Word I don't uſe in my ordinary Converſation, a Word that never comes out of the Mouth of a Gentleman, and is falſe.

Mr. *Speaker.* Mr. Anneſly, 'tis underſtood that you receiv'd a Letter from a worthy Member of this Houſe, Mr. Moore; and I think you told us that you had that Letter, and all other Letters that you had received from any Members; I know not whether the Houſe will order the reſt, but that worthy Member deſires that his Letter may be produc'd if you have it.

Mr. *Anneſly.* Mr. Moore has deſir'd it, has he?

Mr. *Harcourt.* I deſire mine too.

Mr. *Speaker.* Mr. Harcourt would have his too.

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Mr *Anneſly*. It is with great Regret that I bring the Letters of Gentlemen here, eſpecially thoſe I receiv'd from any of the Members of this Houſe, who did me the Honour to correſpond with me at that time; tho' I think there is nothing written in them that any Man need decline owning. And therefore, I think it will be more for their Service to ſhew them, leſt they may be ſuſpected for what they don't deſerve: If this Houſe obliges me to lay them all before them, I muſt ſubmit.

Members. No, no.

Mr. *Speaker*. But that Gentleman deſires you to produce his.

And Mr. Harcourt alſo deſires his.

Mr. *Anneſly*. I have but four in my Hand, one from Mr. Moore, one from Mr. Harcourt, the reſt are from Mr. Sloane.

Mr. *Sloane*. I deſire he will produce mine too.

Mr. *Speaker*. I think you named but three, Mr. Sloane deſires his too.

Mr. *Anneſly*. There are two from Mr. *Sloane*, one from Mr. Harcourt, and the other from Mr. Moore.

Which Letters Mr. Anneſly delivered in to the Clerk.

Mr. *Anneſly*. I think it my Duty to ſay ſomething for Mr. Hamilton who is abſent, and that is to aſſure you that I never heard any Words fall from him that were unbecoming a Gentleman fit to be intruſted by you in this Commiſſion; and as for that which is ſaid of Mr. Trenchard, 'tis falſe as to my hearing of it: I was preſent at all the Debates, and I do not remember the leaſt thing that ever came from him, reflecting upon the King or his Grants, in the whole courſe of our Converſation, otherwiſe than as he has told you himſelf.

There having been divers groundleſs and ſcandalous Aſperſions caſt upon Francis Anneſly, John Trenchard, James Hamilton and Henry Langford Eſqrs;

Votes thereon.

Reſolved, That the ſaid four Commiſſioners have acquitted themſelves, in the Execution of that Commiſſion, with Underſtanding, Courage and Integrity.

That Sir Richard Leving, another of the ſaid Commiſſioners, has been the Author of the ſaid groundleſs and ſcandalous Reports upon the four Commiſſioners beforementioned.

That the ſaid Sir Richard Leving be committed to the Tower for the ſaid Offence.

And he was committed accordingly.

Two Days after, the Bill *for applying the Iriſh Forfeitures to the Uſe of the Public*, was read a ſecond Time, and committed

mitted to a Committee of the whole House. Upon this Occaſion, the Courtiers made a Motion, and cauſed the Queſtion to be put, That the ſaid Committee be empowered to receive a Clauſe for reſerving a Proportion of the Forfeited Eſtates in Ireland, to the Diſpoſal of his Majeſty; which paſſing in the Negative, it was reſolved on the 18th, That the adviſing, procuring and paſſing the ſaid Grants of the Forfeited and other Eſtates in Ireland, had been the Occaſion of contracting great Debts upon the Nation, and levying heavy Taxes on the People; that the adviſing and paſſing the ſaid Grants was highly reflecting on the King's Honour; and that the Officers and Inſtruments concerned in the procuring and paſſing theſe Grants had highly failed in the Performance of their Truſt and Duty. Anno 11 W. III. 1699.

All this while the Buſineſs of the Supply went on, and they reſolv'd, That the Sum of 76383 l. now remaining in the Exchequer, on account of Tonnage and Poundage, with what the Subſidy ſhould bring in more to the 25th of December, ſhould be applied towards the Payment of Seamens Wages, and that 220000 l. be borrowed at 5 *per Cent.* for the ſame Uſe: That 7000 Seamen be the Complement for the next Year's Service; that 1800 *l.* be allowed for Bounty-Money to the Officers of the Fleet; 90,000 l. for the Extraordinary of the Navy; 300,000 l. for Guards and Garriſons; and 25,000 l. for the Office of Ordnance for the Year 1700. They likewiſe made a Proviſion for Half-Pay to the disbanded Officers; and laid two Shillings in the Pound Land-Tax. On the 6th of February they reſolv'd to raiſe Money to diſcharge the Debt due to Army; and being in a hot Scent after Grants, a Motion was made and the Queſtion put, That the procuring or obtaining of Grants of Eſtates belonging to the Crown, by any public Miniſter concern'd in the directing or paſſing ſuch Grants, to or for their own Uſe or Benefit, while the Nation lay under the heavy Taxes of the late War, was highly injurious to his Majeſty, and prejudicial to the State, and a Violation of the Truſt repos'd in them. Whereon the Court-Party carried it in the Negative; but at the ſame time, they gave their conſent to an Order for bringing in a Bill, *To reſume the Grants of all Lands and Revenues of the Crown, and all Penſions granted by the Crown ſince the 6th of February*, 1684, *and for applying the ſame to the Uſe of the Public.*

Reſolutions on the Supply.

The Reſumption Bill ordered.

On February the 15th, the Commons proceeded to conſider further of the State of the Nation; and upon a very hot and long Debate, it was reſolved, That an Addreſs be preſented to his Majeſty, repreſenting to him the Reſolutions of this Houſe of the 18th of January laſt, relating to the Grants of the Forfeited Eſtates in Ireland.

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On the 21st, the Commons in a Body having waited on the King, with their Addreſs of the 15th of that Month, in relation to the Iriſh Forfeitures, his Majeſty told them:

Votes of the Houſe relating to the ſaid Grants preſented to his Majeſty, with the Addreſs.

The King's Anſwer.

'Gentlemen,

'I WAS not led by Inclination, but thought myſelf 'obliged in juſtice to reward thoſe who had ſerved well, 'and particularly in the Reduction of Ireland, out of the 'Eſtates forfeited to me, by the Rebellion there. The long 'War in which we were ingaged did occaſion great Taxes, 'and has left the Nation much in debt; and the taking juſt 'and effectual Ways for leſſening that Debt and ſupporting 'Public Credit, is what, in my Opinion, will beſt contribute 'to the Honour, Intereſt and Safety of this Kingdom.'

Warm Votes thereon.

The Speaker having, five Days after, reported this Anſwer, the Commons were ſo provoked by it, that they reſolved, That whoſoever adviſed it, had uſed his utmoſt Endeavours to create a Miſunderſtanding and Jealouſy between the King and his People.

Ways and Means

Coll. Granville, afterwards Lord Granville, was, during this Interval, Chairman of the Committee of the whole Houſe, who took into Conſideration the State of his Majeſty's Revenue, and Reſolv'd, That there had been a great Loſs in his Majeſty's Revenue of Exciſe; and, That it be an Inſtruction to the Committee of the whole Houſe, to whom the Land-Tax and Iriſh Forfeiture Bills were committed, that they receive a Clauſe to enable his Majeſty, for the Improvement of the Revenue, to let to farm the Duties of Exciſe; but no Member of the Houſe to be a Farmer or Manager of Exciſe.

On the 7th of March they voted 1000 l. to be paid the Earl of Drogheda, Francis Anneſly, John Trenchard, James Hamilton, Henry Langford, Eſqrs; and to James Hooper, Secretary to the Commiſſioners; but to Sir Richard Leving and Sir Francis Brewſter, who had been at as much Trouble as the reſt, only 500 l. each, in Conſideration of their Expences. They laid a Duty on Iriſh Hops, on Eaſt-India Goods, and continued the Duties on French Goods and Wines, towards raiſing the Supply; and ordered a Clauſe in one of the Money-Bills for the importing, Cuſtom-free, a certain Quantity of Paper for printing Dr. Alix's Eccleſiaſtical Hiſtory. They Reſolved, That a Supply be granted to his Majeſty towards the Payment of his Proportion of the Debt owing to the Prince of Denmark, and the Moneys to be rais'd to be laid out in this Kingdom, and ſettled upon the Prince and Princeſs, and their Iſſue, according to their Marriage-Agreement. That an Addreſs be preſented to his Majeſty, that

that he would uſe his Endeavour to procure other Princes and States to pay their Proportions of the ſaid Debt. They agreed upon a Supply for the Coinage, for circulating Exchequer-Bills one Year longer, for making good the Deficiencies of the three Shillings in the Pound, in th eighth Year of his Majeſty's Reign, and of the Duty on ſtamp'd Paper and Parchment, granted in the ſame Seſſion of Parliament; of the Malt-Tickets and Quarterly Poll granted in the next Year, for paying off the Tranſport-Debt, and for Payment of the Debt due to the Navy, and ſick and wounded Seamen.

Addreſs relating to Capt. Kidd.

The 16th, an Addreſs was preſented to the King, That Capt. Kidd might not be tried, diſcharg'd, or pardon'd, until the next Seſſion of Parliament; and that the Earl of Bellamont, Governour of New-England, might tranſmit over all Inſtructions and Papers taken with, or relating to the ſaid Kidd; which his Majeſty complied with.

Commiſſioners nominated for the Sale of the Iriſh Forfeitures.

March 26. The Houſe having conſidered of the Number, Qualifications, and Manner of chuſing the Truſtees for the Bill of Iriſh Forfeitures, they Reſolved, That the Number of the ſaid Truſtees be thirteen; That no Perſon be a Truſtee who had any Office or Profit, or was accountable to his Majeſty; or was a Member of this Houſe. And that the ſaid Truſtees be choſen by ballotting. Two Days after, the ſeveral Members of the Houſe having given in Liſts of thirteen Perſons Names, which were put into Glaſſes, the Majority fell upon Francis Anneſly, James Hamilton, John Biggs, John Trenchard, James Iſham, Henry Langford, James Hooper, Eſqrs; Sir Cyril Wyche, John Cary, Gent. Sir Henry Sheers, Thomas Harriſon, Eſq; Sir John Worden, William Fellows, and Thomas Rawlins, Eſqs; The two laſt Perſons having equal Voices, either of them muſt have been left out; but the Houſe being informed, that Sir John Worden was a Baron of the Exchequer, in the County-Palatine of Cheſter, during his Life, at a yearly Salary from the Crown, it was Reſolved, That the ſaid Sir John Worden was not capable of being Truſtee in the ſaid Bill, and ſo the other two ſtood.

Bill of Reſumption paſs'd.

On the 2d of April, the Commons paſſed the Bill *for granting an Aid to his Majeſty, by Sale of the Forfeited and other Eſtates and Intereſts in Ireland; and by a Land-Tax in England for the ſeveral Purpoſes therein mentioned:* and ſent it to the Lords for their Concurrence.

Proceedings of the Houſe ordered to be printed.

The 8th, the Houſe ordered the Report of the Commiſſioners for Iriſh Forfeitures to be publiſhed; and that the Reſolutions of the 18th of January laſt, the Reſolution of the 4th of April 1690, relating to the forfeited Eſtates; his Maſty's Speech to both Houſes, the 5th of January, 1690-1. the Addreſs of the Houſe to the King the 5th of February laſt;

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laſt; his Majeſty's Anſwer thereunto the 26th of the ſame February, and the Reſolution of the Houſe thereupon; and laſtly, the Addreſs of the Houſe of Commons, of the 4th of March, 1692-3, and his Majeſty's Anſwer thereunto, be alſo reprinted with the ſaid Report. And Reſolv'd, That the procuring or paſſing exorbitant Grants, by any Member now of the Privy-Council, or by any other that had been a Privy-Counſellor in this or any former Reign, to his Uſe or Benefit, was a High Crime and Miſdemeanour.

On the other hand, the Court finding their Party extreemly weak in the Houſe of Commons, endeavoured to oppoſe the paſſing of this complicated Bill in the Houſe of Lords; to which the Majority of that illuſtrious Aſſembly was inclined; ſome out of Complaiſance to the King, and moſt of them becauſe they looked upon the tacking of one Bill to another, as an Innovation in parliamentary Proceedings, and ſuch as evidently tended to retrench, if not wholly to take away the Share the Peers of England ought to have in the legiſlative Authority. But becauſe they could not reject the Bill without leaving the urgent Neceſſities of the State unprovided, their Lordſhips contented themſelves to make great Amendments to that Part of it that related to Forfeitures. The Commons having conſidered and unanimouſly diſapproved the ſaid Amendments, ſent to deſire a Conference with the Lords thereupon; appointed a Committee to draw up Reaſons to be offered to their Lordſhips; reſolved, That two Days after, they would proceed in the further Conſideration of the Report given in by the Commiſſioners for Iriſh Forfeitures; and ordered a Liſt of his Majeſty's Privy-Council to be laid before the Houſe.

Amendments made, by the Lords, to the Bill of Supply.

On the 9th of April, a Conference was managed between both Houſes, in which the Lords did warmly inſiſt on their Amendments; and the Commons as vehemently maintain'd their Diſagreement with their Lordſhips. The next Day two Conferences were had on the ſame Subject, and with as little Succeſs; at which the Commons were ſo exaſperated, that they ordered the Lobby of their Houſe to be cleared of all Strangers; the Back-Doors of the Speaker's Chamber to be lock'd up; and that the Serjeant ſhould ſtand at the Door of the Houſe, and ſuffer no Members to go forth; and then proceeded to take into Conſideration the Report of the Iriſh Forfeitures, and the Liſt of the Lords of the Privy-Council.

Conferences between the two Houſes thereon.

The King being informed of the high Ferment the Commons were in, and apprehending the Conſequences, ſent a private Meſſage (by the Earl of Albemarle) to the Lords, to paſs the Bill without Amendments; which their Lordſhips did accordingly, and acquainted the Commons with it.

The King deſires the Lords to comply, which they do.

This

This Condeſcenſion did not wholly appeaſe the Commons, who, purſuing their Reſentment againſt the preſent Miniſtry, put the Queſtion, That an Addreſs be made to his Majeſty, to remove John Lord Somers, Lord Chancellor of England from his Preſence and Councils for ever; which though it was carried in the Negative, by reaſon of the acknowledged Merit and great Services of that Peer, yet it was Reſolved, That an Addreſs be made to his Majeſty, that no Perſon, who was not a Native of his Dominions, except his Royal Highneſs Prince George of Denmark, be admitted to his Majeſty's Councils in England or Ireland. Anno 11 W. III. 1700.

The King did not think it proper to receive any ſuch Addreſs, and therefore to prevent the offer of it, his Majeſty came the day following, *viz.* Thurſday, April 11. to the Houſe of Peers, and after paſſing a great Number of Bills, commanded the Earl of Bridgwater to prorogue the Parliament to the 23d of May. It was afterwards diſſolved on the 19th of December; and a new Parliament called, to begin at Weſtminſter, Feb 6th. Parliament prorogued.

The new Parliament according to the Writs of Summons, met at Weſtminſter on Feb. 6th, and was prorogued to Monday, Feb. 10th. when the King came to the Houſe of Peers, and ſending for the Commons, ſignified to them by the Lord Keeper, that they ſhould forthwith proceed to the Choice of a fit Perſon to be their Speaker, and preſent him to his Majeſty. The next Day the Commons returning to their Houſe, made choice of Robert Harley Eſq; who was the next Day preſented and approved by the King; after which, his Majeſty made this Speech to both Houſes. Fifth Parliament. Mr. Harley Speaker.

'My Lords and Gentlemen,

'OUR great misfortune in the loſs of the Duke of 'Glouceſter, hath made it abſolutely neceſſary, that 'there ſhould be a further Proviſion for the Succeſſion to 'the Crown in the Proteſtant Line, after me and the Princeſs. 'The Happineſs of the Nation, and the Security of our Re'ligion, which is our chiefeſt Concern, ſeems ſo much to 'depend upon this, that I cannot doubt but it will meet with 'a general concurrence: And I earneſtly recommend it to 'your early and effectual Conſideration King's Speech.

'The Death of the late King of Spain, with the Decla'ration of his Succeſſor to that Monarchy, has made ſo great 'an alteration in the Affairs abroad, that I muſt deſire you 'very maturely to conſider their preſent State; and I make 'no doubt but your Reſolutions thereupon will be ſuch, as 'ſhall be moſt conducing to the Intereſt and Safety of Eng'land, the Preſervation of the Proteſtant Religion in gene'ral, and the Peace of all Europe.

'Theſe

Anno 12 W. III. 1700.

'These things are of such Weight, that I have thought 'them most proper for the Consideration of a new Parlia- 'ment, to have the more immediate Sense of the Kingdom 'in so great a Conjuncture.

'I must desire of you Gentlemen of the House of Com- 'mons, such Supplies as you shall judge necessary for the 'Service of the current Year; and I must particularly put 'you in mind of the Deficiencies and Public Debts occasion'd 'by the late War, that are yet unprovided for.

'I am obliged further to recommend to you, that you 'would inspect the Condition of the Fleet, and consider 'what Repairs or Augmentations may be requisite for the 'Navy, which is the great Bulwark of the English Nation, 'and ought at this Conjuncture most especially, to be put into 'a good Condition; and that you would also consider, what 'is proper for the better Security of those Places where the 'Ships are laid up in Winter.

'The Regulation and Improvement of our Trade, is of 'so Public Concern, that I hope it will ever have your se- 'rious Thoughts; and if you can find proper means of set- 'ting the Poor at work, you will ease your selves of a 'very great Burthen; and at the same time add so many 'useful Hands to be employed in our Manufactures, and 'other public Occasions.

'My Lords and Gentlemen,

'I hope there will be such an Agreement and Vigour in 'the Resolutions you shall take, upon the important matters 'now before you, as may make it appear, we are firmly 'united among ourselves; and in my Opinion nothing can 'contribute more to our Safety at home, or to our being con- 'siderable abroad.'

The Commons spent the two succeeding Days in qualifying themselves; and on the 13th began with the Business of Bribery in Elections, which was a Matter of long Debates and Censures. On the 14th, upon reading his Majesty's Speech, they came to this Resolution; (on a Division, Yeas 181. Noes 160.) 'That they would stand by and support his Majesty and his Goverenment, and take such effectual measures as may best conduce to the Intereſt and Safety of England, the Preservation of the Protestant Religion, and the Peace of Europe.' This Resolution was presented to his Majesty by the whole House, on February the 17th, and the King gave them this gracious Answer.

The Commons Address.

King's Answer.

'I thank you for this Address, and your ready Concur- 'rence to those great Ends therein mentioned, which I take 'to be extremely important to the Honour and Safety of 'England; and I assure you, I shall never propose any thing 'but what is for our common Advantage and Security.

'Having this Occaſion, I think it proper to acquaint you, Anno 12 W. III. 1700.
'that yeſterday I received a Memorial from the Envoy Extraordinary of the States-General, a Tranſlation whereof 'I leave with you: As to the firſt Part of it, I think it neceſſary to ask your Advice, as to the latter Part I deſire 'your Aſſiſtance.'

Upon the Report of the King's Anſwer, to their Addreſs abovementioned, the Commons farther Reſolved, 'That an humble Addreſs be made to his Majeſty, by ſuch Members as are of the Privy Council, that he will pleaſe to cauſe the Treaty between England and the States-General of the third of March, 1677, and all the renewals thereof ſince that time, to be laid before the Houſe.' Which his Majeſty commanded to be done by Mr. Secretary Hedges. And the Houſe was ſo well ſatisfied, that on February the 20th they reſolved, 'That an humble Addreſs be made to his Majeſty, that he will pleaſe to enter into ſuch Negotiations, in concert with the States-General of the United Provinces, and other Potentates, as may moſt effectually conduce to the mutual Safety of theſe Kingdoms, and the States-General, and the Preſervation of the Peace of Europe; and giving him Aſſurances of Support and Aſſiſtances, in performance of the Treaty made with the States-General, the third of March, 1677.' This Addreſs was preſented by the whole Houſe on Friday the 21ſt of February. And his Majeſty was pleaſed to return the following Anſwer.

A ſecond Addreſs.

A third Addreſs.

'Gentlemen,

'I Thank you heartily for the Advice you have given me, 'and your unanimous Reſolution to ſupport and aſſiſt 'me, in making good the Treaty mentioned in your Addreſs; 'and I will immediately order my Miniſters abroad, to enter into Negotiations in concert with the States-General, 'and other Potentates, for the attaining thoſe great Ends 'which you deſire. Nothing can more effectually conduce 'to our Security, than the Unanimity and Vigour you have 'ſhewed on this Occaſion: And I ſhall always endeavour on 'my Part, to preſerve and increaſe this mutual Truſt and 'Confidence between us.'

King's Anſwer.

On Conſideration of that Part of his Majeſty's Speech, which related to the Succeſſion, the Commons reſolved, (the 3d of March) That for the preſerving the Peace and Happineſs of this Kingdom, and the Security of the Proteſtant Religion by Law eſtabliſhed, it is abſolutely neceſſary, a further Declaration be made of the Limitation and Succeſſion of the Crown, in the Proteſtant Line, after his Majeſty, and the Princeſs, and the Heirs of their Bodies reſpectively

First Vote in relation to the Proteſtant Succeſſion.

Anno 12 W. III. 1700.

ſpectively. And that farther Proviſion be firſt made, for Security of the Rights and Liberties of the People.

Heads of the Bill of Succeſſion.

On March the 12th, Mr. Conyers reported the further Reſolutions of the Committee appointed for that purpoſe; and the Houſe did then agree and reſolve, 1ſt, That all things relating to the well-governing of this Kingdom, which are properly cognizable in the Privy-Council, ſhall be tranſacted there, and all Reſolutions, taken thereupon ſhall be ſigned by the Privy-Council. 2d, That no Perſon whatſoever, that is not a Native of England, Scotland or Ireland, or the Dominions thereunto belonging; or who is not born of Engliſh Parents beyond the Seas (although ſuch Perſon be naturalized or made Deniſon) ſhall be capable of any Grant of Lands, Tenements or Hereditaments from the Crown, to himſelf, or any other in Truſt for him. 3d, That upon the further Limitation of the Crown, in caſe the ſame ſhall hereafter come to any Perſon not being a Native of this Kindom of England, this Nation be not obliged to engage in any War for the Defence of any Dominion, or Territories not belonging to the Crown of England, without the Conſent of Parliament. 4th, That whoſoever ſhall hereafter come to the Poſſeſſion of this Crown, ſhall join in Communion with the Church of England as by the Law eſtabliſhed. 5th, That no Pardon be pleadable to any Impeachment in Parliament. 6th, That no Perſon who ſhall hereafter come to the Poſſeſſion of this Crown, ſhall go out of the Dominions of England, Scotland, or Ireland, without Conſent of Parliament. 7th, That no Perſon who has any Office under the King, or receives a Penſion from the Crown, ſhall be capable of ſerving as a Member of the Houſe of Commons. 8th, That further Proviſion be made, for the confirming of all Laws and Statutes for the ſecuring our Religion, and the Rights and Liberties of the People. 9th, That Judges Commiſſions be made *Quam diu ſe bene geſſerint*, and their Salaries aſcertained and eſtabliſhed; but upon the Addreſs of either Houſe of Parliament, it may be lawful to remove them. 10th, That the Princeſs Sophia Dutcheſs Dowager of Hanover, be declared the next in Succeſſion to the Crown of England in the Proteſtant Line, after his Majeſty and the Princeſs, and the Heirs of their Bodies reſpectively; and that the further Limitation of the Crown be to the ſaid Princeſs Sophia and the Heirs of her Body, being Proteſtants. 11th, That a Bill be brought in upon the ſaid Reſolutions.

On the 18th of March, the following Meſſage was delivered to the Houſe of Commons by Mr. Secretary Hedges, and read by the Speaker.

'WILLIAM

Anno 12 W. III. 1700.

'WILLIAM Rex,

'His Majeſty having directed Mr. Stanhope, his Envoy 'Extraordinary and Plenipotentiary at the Hague, to 'enter into Negotiations in concert with the States-General 'of the United Provinces, and other Potentates, for the 'mutual Security of England and Holland, and the Preſer-'vation of the Peace of Europe, according to an Addreſs of 'this Houſe to that effect: And the ſaid Mr. Stanhope hav-'ing tranſmitted to his Majeſty, Copies of the Demands 'made by himſelf and the Deputies of the States upon that 'Subject, to the French Ambaſſador there; his Majeſty hath 'thought fit to communicate the ſame to you, it being his 'Majeſty's gracious Intention, to acquaint you from time to 'time with the State and Progreſs of thoſe Negotiations, 'into which he has entered purſuant to your Addreſs above-'mentioned. Kenſington the 17th of March, 1700.'

King's Meſſage to the Commons.

When this Meſſage was taken into the Conſideration of the Commons on the 21ſt of March, they began with the great Obſtruction to it, the Treaty of Partition: And after reading the ſaid Meſſage the Propoſals made to the French Ambaſſador by Mr. Stanhope, and the Reſolution of the States-General for treating with Monſieur d'Avaux, they reſolved, That the Treaty of Partition be read; and after reading of it, they proceeded to this Reſolution, 'That an humble Addreſs be preſented to his Majeſty; to return the Thanks of this Houſe for his gracious Meſſage, wherein he is pleaſed to communicate his Royal Intentions, to acquaint this Houſe from time to time with the State and Progreſs of thoſe Negotiations, into which his Majeſty had entered pur-ſuant to the Addreſs of this Houſe. And alſo to lay be-fore his Majeſty the ill Conſequences of the Treaty of Par-tition (paſſed under the Great Seal of England, during the ſitting of Parliament, and without the Advice of the ſame) to the Peace of Europe, whereby ſuch large Territories of the King of Spain's Dominions were to be delivered up to the French King.' When this Addreſs was preſented to the King, he did ſomewhat reſent the Unkindneſs of it; and thought there was much more Reaſon to complain of the perfidious Breach of the Treaty, than of the making of it. However, to decline the entering into any Defence of it, he gave this prudent Anſwer.

Addreſs on the Partition-Treaty.

'Gentlemen,

'I am glad you are pleaſed with my communicating to 'you the State of the Negotiations I have entered into, pur-'ſuant to your Addreſs; I ſhall continue to inform you of 'the Progreſs that ſhall be made in them; and be always 'willing to receive your Advice thereupon; being fully 'perſuaded, that nothing can contribute more effectually to

King's Anſwer.

Anno 12 W.III. 1701.

'the Happineſs of this Kingdom, and the Peace of Europe, 'than the Concurrence of the Parliament in all my Negotia- 'tions, and a good Underſtanding between me and my 'People.'

Upon the French Ambaſſador's declining to give a ſatisfactory Anſwer to the Memorials preſented by Mr. Stanhope and the Dutch, his Majeſty ſent this Meſſage to the Houſe of Commons.

'WILLIAM Rex,

'His Majeſty having received an Account from Mr. 'Stanhope, his Envoy Extraordinary at the Hague, that the 'French Ambaſſador there had declared to the Penſionary, 'that the King his Maſter had no other Anſwer to return 'to the Demands made by the States-General of the United 'Provinces, than that he is ready to renew and confirm the 'Treaty of Ryſwick, it being all the Security the States are 'to expect; and that he has no Orders to give any Anſwer 'to his Majeſty's ſaid Envoy; but if his Majeſty has any 'thing to demand, it may be done by his Ambaſſador at 'Paris, or to the French Miniſter at London; and that he 'has no Commiſſion to treat with any but the States. And 'his Majeſty having alſo received two Reſolutions of the 'States, and a Memorial from their Envoy here, relating 'to the Ships they are ſending to join his Majeſty's Fleet, 'and the Succours they deſired may be haſtened to them, 'by virtue of the Treaty made the third of March, one 'thouſand ſix hundred ſeventy-ſeven: His Majeſty has 'thought fit to communicate the whole to this Houſe, that 'they may be particularly informed of the preſent State of 'Affairs abroad, where the Negotiations ſeem to be at an 'end, by the poſitive Anſwer the French Ambaſſador has 'given to the States. Which his Majeſty recommends to the 'ſerious Conſideration of this Houſe, as a Matter of the 'greateſt Weight and Conſequence; and deſires that they 'will give his Majeſty ſuch Advice thereupon, as may be for 'our own Security, and that of the States-General, and the 'Peace of Europe. Kenſington, the thirty firſt day of 'March, one thouſand ſeven hundred and one.'

Humble Advice of the Commons.

When this Meſſage was taken into the Conſideration of the Houſe, they Reſolved, *nemine contradicente*, April 2. 'That the humble Advice of this Houſe be given to his Majeſty, to deſire, that his Majeſty will be pleaſed to carry on the Negotiations in concert with the States-General, and take ſuch meaſures therein as may moſt conduce to their Security; and that his Majeſty will purſue the Treaty made with the States-General the third of March, 1677. and to aſſure his Majeſty, that this Houſe will effectually enable him to ſupport the ſaid Treaty of 1677.'

When

When this Reſolution of Advice was preſented to his Majeſty, Mr. Secretary Hedges reported his Majeſty's Anſwer to this effect: 'That according to the Advice of the 'Houſe of Commons, his Majeſty has given Orders to his 'Envoy Extraordinary at the Hague, to carry on the Negotiations in concert with the States-General, and to take 'ſuch meaſures therein, as may moſt conduce to their Security. His Majeſty thanks you for the aſſurance you have 'given, that this Houſe will effectually enable him to ſupport the Treaty of 1677, and will purſue the ſame as you 'adviſe. He does not doubt, but the readineſs you have 'ſhewn upon this Occaſion, will very much contribute to 'the obtaining ſuch a Security as is deſired.'

Anno 12 W. III. 1701.

King's Anſwer.

The Commons of England, not content with their Addreſs to the King againſt the Treaty of Partition, proceeded to ſhew their Abhorrence of it, in a manner that ſeemed to affect our Peace at home, more than to prepare for a War abroad. For, on April the firſt, they Reſolved, That William Earl of Portland by negociating and concluding the Treaty of Partition, (which was deſtructive to the Trade of this Kingdom, and dangerous to the Peace of Europe) is guilty, and ſhall be impeached, of high Crimes and Miſdemeanors. And they ordered Sir John Leviſon Gower to go up to the Lords, and at their Bar to impeach the ſaid Earl, and to acquaint their Lordſhips, that they will in due time exhibit particular Articles againſt him. And then deſired a Conference with the Lords upon matters relating to the Treaty of Partition; at which Conference the Commons delivered this Paper to the Lords.

Reſolution to impeach the Earl of Portland.

It appearing by your Lordſhips Journal, that your Lordſhips have received Information of ſome Tranſactions between the Earl of Portland, and Mr. Secretary Vernon, relating to the Partition of the Spaniſh Monarchy, the Commons having the ſaid Matter under their Conſideration, deſire your Lordſhips will be pleaſed to communicate to the Commons, what Informations your Lordſhips have had, of any Tranſactions relating to any Negotiations or Treaties of Partition of the Spaniſh Monarchy, by Letters or otherwiſe. And the Commons are fully aſſured, that your Lordſhips will readily concur in aſſiſting them in this Enquiry, which they conceive abſolutely neceſſary for the Safety and Honour of this Kingdom, and the Preſervation of the Peace of Europe.'

Paper delivered to the Lords at a Conference.

The Lords ordered the two Latin Commiſſions of Powers granted to the Earls of Portland and Jerſey, for Negotiating the ſaid Treaties, one dated the 1ſt of July, 1699, the other on the 2d of January, 1700, as alſo a private Paper of the Lord Portland's running thus:

At

Anno 12 W. III. 1701.

A printed Paper of the Earl of Portland's.

'At the beginning of the Summer of the Year 1699, when I was in Holland, at my Country-Houſe, and when the King would have me concerned in the Negotiation of this Treaty with the Emperor, the French King, and the States; being very unwilling to meddle with Buſineſs again, from which I was retired, before I would engage myſelf, I adviſed with my Friends in Holland, and writ into England to Mr. Secretary Vernon, as my particular Friend, whether it was adviſable for me to engage in any Buſineſs again? To which Mr. Vernon anſwered in ſubſtance, that this would not engage me but for a little while: That I being upon the Place, and generally acquainted with the Foreign Miniſters, it would be eaſier for the King, and more proper for me to be employed in it, than any body elſe, that muſt be otherwiſe ſent for on purpoſe.'

Impeachment of the Lord Somers.

The next Perſon whom the Commons intended to call upon, was John Lord Somers, late Lord-Chancellor of England, on whoſe Judgment and Fidelity the King had very much relied: His Lordſhip being ſenſible of the Storm that was coming on, deſired the Earl of Portland, with leave of the Houſe, to declare if he pleaſed, whether the Lord Somers's Name was mentioned in the Letter he received from Mr. Secretary Vernon? The Earl of Portland ſtood up and declared, 'That if he had remembered any ſuch thing in the Letter, and had not inſerted it in the Paper which he had delivered to the Houſe, he ſhould have thought he had deceived the Houſe.'

He is heard by the Houſe.

On April the 14th, the Lord Somers ſent in an Information to the Houſe of Commons, That having heard the Houſe was upon a Debate concerning him, he deſired that he might be admitted in and heard: This was granted, and a Chair was ſet by the Serjeant, a little within the Bar on the left Hand; then the Serjeant had Directions to acquaint the Lord Somers, that he might come in; and the Door being opened, his Lordſhip came in, and Mr. Speaker acquainted his Lordſhip, that he might repoſe himſelf in the Chair provided for him; and his Lordſhip was heard what he had to offer to the Houſe, which he did with great plainneſs and preſence of mind. But when his Lordſhip withdrew, the Houſe came to this Reſolution, 'That John Lord Somers, by adviſing his Majeſty in the Year 1698, to the Treaty for Partition of the Spaniſh Monarchy, whereby large Territories of the King of Spain's Dominions, were to be delivered up to France, is guilty of a high Crime and Miſdemeanour: And they ordered Mr. Harcourt to go up to the Lords, and at their Bar to impeach him, and to acquaint their Lordſhips, that the Houſe will in due time exhibit particular Articles againſt him.' And immediately after, they

Vote againſt him.

they Reſolved, That Edward Earl of Orford, and Charles Lord Hallifax be for the ſame Reaſons impeached of high Crimes and Miſdemeanours. Anno 12 W. III. 1701.

The Lord Somers had delivered to the Houſe of Commons a Copy of the Letter which he had ſent to his Majeſty, in Anſwer to one from his Majeſty, upon Occaſion of that Treaty: Both which are fit to be inſerted. And the Earl of Orford, and Lord Hallifax.

At Loo, $\frac{15}{25}$ of Auguſt, 1698.

King's Letter to Lord Somers.

'I Imparted to you before I left England, that in France there was expreſſed to my Lord Portland ſome Inclination to come to an Agreement with us, concerning the Succeſſion of the King of Spain; ſince which, Count Tallard has mentioned it to me, and has made Propoſitions, the Particulars of which my Lord Portland will write to Vernon, to whom I have given Orders not to communicate them to any other beſides yourſelf, and to leave all to your Judgment, and to whom elſe you would think proper to impart them; to the end that I might know your Opinion upon ſo important an Affair, and which requires the greateſt Secrecy. If it be fit this Negotiation ſhould be carried on, there is no time to be loſt, and you will ſend me the full Powers under the Great Seal, with the Names in blank, to treat with Count Tallard. I believe that this may be be done ſecretly, that none but you and Vernon, and thoſe to whom you ſhall communicate it, may have knowledge of it; ſo that the Clerks who are to write the Warrant and the full Powers, may not know what it is. According to all Intelligence, the King of Spain cannot out-live the Month of October, and the leaſt Accident may carry him off every Day. I received Yeſterday your Letter of the 9th. Since my Lord Wharton cannot at this time leave England, I muſt think of ſome other to ſend Ambaſſador into Spain; if you can think of any one proper, let me know it, and be always aſſured of my Friendſhip.'

WILLIAM Rex.

The Lord Somers's Anſwer.

Tunbridge Wells, 28th Auguſt, 1698. O. S.

'SIR,

Lord Somers's Anſwer.

HAving your Majeſty's permiſſion to try if the Waters would contribute to the re-eſtabliſhment of my Health, I was juſt got to this Place, when I had the Honour of your Commands; I thought the beſt way of executing them would be to communicate to my Lord Orford, Mr. Montagu, and the Duke of Shrewsbury (who, before I left London, had

Anno 12 W. III. 1701.

had agreed upon a meeting about that time) the Subject of my Lord Portland's Letter; at the ſame time letting them know, how ſtrictly your Majeſty required that it ſhould remain an abſolute Secret.

'Since that time, Mr. Montagu, and Mr. Secretary are come down hither; and upon the whole diſcourſe, three things have principally occurred, to be humbly ſuggeſted to your Majeſty.

'Firſt, That the entertaining a Propoſal of this Nature, ſeems to be attended with very many ill Conſequences, if the French did not act a ſincere Part; but we were ſoon at eaſe, as to any Apprehenſion of this ſort, being fully aſſured your Majeſty would not act but with the utmoſt nicety, in an Affair wherein the Glory and Safety of Europe were ſo highly concerned.

'The ſecond thing conſidered, was the very ill Proſpect of what was like to happen upon the Death of the King of Spain, in caſe nothing was done previouſly towards the providing againſt that Accident, which ſeemed probably to be very near: The King of France having ſo great a Force in ſuch a readineſs, that he was in a Condition to take Poſſeſſion of Spain, before any other Prince could be able to make a ſtand. Your Majeſty is the beſt Judge whether this be the Caſe, who are ſo perfectly informed of the Circumſtances of Parts abroad.

'But ſo far as relates to England, it would be want of Duty not to give your Majeſty this clear Account, That there is a deadneſs and want of Spirit in the Nation univerſally, ſo as not at all to be diſpoſed to the thought of entering into a new War; and that they ſeem to be tired out with Taxes to a degree beyond what was diſcerned, till it appeared upon the Occaſion of the late Elections. This is the Truth of the Fact, upon which your Majeſty will determine what Reſolutions are proper to be taken.

'That which remained, was the Conſideration what would be the Condition of Europe, if the Propoſal took place: Of this we thought ourſelves little capable of judging; but it ſeemed that if Sicily was in the French Hands, they will be entirely Maſters of the Levant-Trade; that if they were poſſeſſed of Final, and thoſe other Sea-Ports on that ſide, whereby Milan would be entirely ſhut out from Relief by Sea, or any other Commerce, that Dutchy would be of little ſignification in the Hands of any Prince; and that if the King of France had Poſſeſſion of that Part of Guipuſcoa, which is mentioned in the Propoſal, beſides the Ports he would have in the Ocean, it does ſeem he would have as eaſy a way of invading Spain on that ſide, as he now has on the ſide of Catalonia.

'But

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'But it is not to be hoped that France will quit its pretences, to ſo great a Succeſſion, without conſiderable advantages; and we are all aſſured, your Majeſty will reduce the Terms as low as can be done, and make them, as far as is poſſible in the preſent Circumſtances of things, ſuch as may be ſome Foundation for the future Quiet of Chriſtendom; which all your Subjects cannot but be convinced is your true aim. If it could be brought to paſs that England might be ſome way a gainer by this Tranſaction, whether it was by the Elector of Bavaria (who is the gainer by your Majeſty's interpoſition in this Treaty) his coming to an agreement to let us into ſome Trade to the Spaniſh Plantations, or in any other manner, it would wonderfully endear your Majeſty to your Engliſh Subjects.

'It does not appear, in caſe this Negotiation ſhould proceed, what is to be done on your part in order to make it take place, whether any more be required than the Engliſh and Dutch ſhould ſit ſtill, and France itſelf to ſee it executed. If that be ſo, what ſecurity ought to be expected, that if, by our being neuters, the French be ſucceſsful, they will confine themſelves to the Terms of the Treaty, and not attempt to make further Advantages of their Succeſs?

'I humbly beg your Majeſty's Pardon that theſe Thoughts are ſo ill put together: Theſe Waters are known to diſcompoſe and diſturb the Head, ſo as almoſt totally to diſable one from writing: I ſhould be extremely troubled if my abſence from London has delayed the Diſpatch of the Commiſſion one Day. You will be pleaſed to obſerve that two Perſons (as the Commiſſion is drawn) muſt be named in it, but the Powers may be executed by either of them. I ſuppoſe your Majeſty will not think it proper to name Commiſſioners that are not Engliſh, or naturalized, in an Affair of this nature.

'I pray God give your Majeſty Honour and Succeſs in all your Undertakings. I am with the utmoſt Duty and Repect,

Sir, your Majeſty's moſt Dutiful and
moſt Obedient Subject and Servant.

P. S. The Commiſſion is wrote by Mr. Secretary, and I have had it ſealed in ſuch a manner, that no Creature has the leaſt knowledge of the thing, beſides the Perſons named.

The Commons in purſuance of Reſolutions taken the 15th of April, did on the 23d, preſent this Addreſs to the King.

The Commons Addreſs to the King.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, do humbly crave leave to repreſent to your Majeſty, the great Satisfaction we have from our late Enquiry

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concerning the Treaty of Partition, made in the Year 1698, (on which the Treaty of 1699 was founded) to ſee your Majeſty's great Care of your People and this Nation, in not entering into that Negotiation without the Advice of your Engliſh Counſellors; and finding that John Lord Somers, on whoſe Judgment your Majeſty did chiefly rely in that ſo important Affair, did, in concert with Edward Earl of Orford, and Charles Lord Hallifax, adviſe your Majeſty to enter into that Treaty of ſo dangerous Conſequence to the Trade and Welfare of this Nation; and who, to avoid the Cenſure which might juſtly be apprehended to fall on thoſe who adviſed the ſame, endeavoured to inſinuate, that your Majeſty, without the Advice of your Council, entered into that Treaty, and under your ſacred Name to ſeek Protection for what themſelves had ſo adviſed: Of which Treatment of your Majeſty we cannot but have a juſt Reſentment: And that they may be no longer able to deceive your Majeſty and abuſe your People, we do humbly beſeech your Majeſty, that you will be pleaſed to remove John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, from your Council and Preſence for ever; as alſo William Earl of Portland, who tranſacted theſe Treaties, ſo unjuſt in their own Nature, and ſo fatal in their Conſequences to this Nation, and the Peace of Europe. And we humbly crave leave upon this Occaſion, to repeat our Aſſurances to your Majeſty, that we will always ſtand by and ſupport your Majeſty, to the utmoſt of our Power, againſt all your Enemies both at home and abroad.'

His Majeſty could not but be very uneaſy at this ſevere dealing with his Councils and his Miniſters; when he knew the Error, if any, was a Miſtake of Judgment only, and that rather of his own, than of any employed by him. However, he kept his Temper, and gave this gracious Anſwer:

King's Anſwer.

'I am willing to take all Occaſions of thanking you very 'heartily, for the Aſſurances you have frequently given me, 'and now repeat, of ſtanding by and ſupporting me againſt 'all our Enemies both at home and abroad: towards which, 'nothing, in my Opinion, can contribute ſo much as a good 'Correſpondence between me and my People. And there'fore you may depend upon it, that I will employ none in 'my Service, but ſuch as ſhall be thought moſt likely to 'improve that mutual Truſt and Confidence between us, 'which is ſo neceſſary in this Conjuncture, both for our own 'Security, and the Defence and Preſervation of our Allies.'

The Houſe of Lords was alarmed at the Addreſs of the Commons, and did apprehend it to be an ill Precedent for Perſons

Perſons to be cenſured, before they were tried. And therefore they interpoſed with this counter Addreſs to his Majeſty. Anno 13 W. III. 1701.

'We your Majeſty's moſt loyal and dutiful Subjects, the Lords Spiritual and Temporal, in Parliament aſſembled, beg leave to repreſent to your Majeſty, that the Houſe of Commons have ſeverally impeached at the Bar of our Houſe, William Earl of Portland, John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, of high Crimes and Miſdemeanors, and they having acquainted us, that they will in due time exhibit particular Articles againſt the ſaid Lords, and make good the ſame; we do moſt humbly beſeech your Majeſty, that your Majeſty will be pleaſed not to paſs any Cenſure upon them, until they are tried upon the ſaid Impeachments, and Judgment be given according to the Uſage of Parliament, and the Laws of the Land.' The Lords Addreſs againſt theſe Proceedings.

In the mean time, his Majeſty, on the 8th of May, ſent this Meſſage to the Houſe of Commons by Mr. Secretary Hedges.

'WILLIAM R.

'His Majeſty having lately received an Account from 'Mr. Stanhope, of the preſent Poſture of Affairs in Holland, 'and likewiſe a Letter from the States-General, which is 'of the greateſt Importance; And his Majeſty, who has ſo 'perfect a Knowledge of their Country, being entirely 'convinced of the Hardſhips of their preſent Condition, 'and the great Preſſures they now lie under, which are 'particularly expreſſed in the above-mentioned Letter, has 'thought it abſolutely neceſſary to communicte the ſame to 'this Houſe; that the Expectations the States have of preſent 'Aſſiſtance from his Majeſty, may more fully appear. And 'his Majeſty does not doubt, but this Houſe will be ſo juſtly 'ſenſible of thoſe immediate Dangers to which they ſtand 'expoſed, as to take the ſame into their moſt ſerious and effectual Conſideration; it being moſt evident, that the 'Safety of England, as well as the very Being of Holland, 'does very much depend upon your Reſolutions in this 'Matter.' A Meſſage from the King to the Commons.

This Meſſage was the next Day taken into the Conſideration of the Commons; and they unanimoſly *Reſolved*, That this Houſe will effectually aſſiſt his Majeſty to ſupport his Allies, in maintaining the Liberty of Europe; and will immediately provide Succours for the States-General, according to the Treaty of the 3d of March, 1677. Vote thereon.

The Nation now began to be in a high Ferment, and the People generally diſliked the Proceedings of the Commons.

Anno 13 W. III. 1701. A bold Teſtimony of it was given in the County of Kent, where a Petition was drawn up in this Form.

The humble Petition of the Gentlemen, Juſtices of the Peace, Grand-Jury, and other Freeholders at the General Quarter-Seſſions of the Peace holden at Maidſtone, the 29th of April, in the thirteenth Year of the Reign of Our Sovereign Lord William III. over England, &c.

The Kentiſh Petition.

'WE the Gentlemen, Juſtices of the Peace, Grand-Jury, and other Freeholders, at the General Quarter-Seſſions at Maidſtone, in Kent, deeply concerned at the dangerous Eſtate of this Kingdom, and of all Europe; and conſidering that the Fate of us and our Poſterity depends upon the Wiſdom of our Repreſentatives in Parliament, think ourſelves bound in Duty, humbly to lay before this Honourable Houſe the Conſequence, in this Conjuncture, of your ſpeedy Reſolution, and moſt ſincere Endeavour to anſwer the great Truſt repoſed in you by your Country. And in regard, that from the Experience of all Ages it is manifeſt, no Nation can be great or happy without Union, we hope, that no Pretence whatſoever ſhall be able to create a Miſunderſtanding among ourſelves, or the leaſt Diſtruſt of his moſt ſacred Majeſty; whoſe great Actions for this Nation are writ in the Hearts of his Subjects, and can never, without the blackeſt Ingratitude, be forgot. We moſt humbly implore this honourable Houſe to have regard to the Voice of the People, that our Religion and Safety may be effectually provided for, that your loyal Addreſſes may be turned into Bills of Supply, and that his moſt ſacred Majeſty (whoſe propitious and unblemiſhed Reign over us we pray God long to continue) may be enabled powerfully to aſſiſt his Allies before it is too late.

And your Petitioners ſhall ever pray, *&c.*

Signed by the Deputy-Lieutenants there preſent, above 20 Juſtices of the Peace, all the Grand-Jury, and other Freeholders then there.

The Gentlemen who deliver'd it, are committed.

This Petition was boldly delivered to the Houſe on May the 8th, and Mr. William Colepepper, Mr. Tho. Colepepper, Mr. David Polehill, Mr. Juſtinian Campney, and Mr. Will. Hamilton, being called in, owned the Petition at the Bar, and their Hands to the ſame: Then they withdrew, and the Petition being read, the Houſe *Reſolved*, That the ſaid Petition was ſcandalous, inſolent, and ſeditious, tending to deſtroy the Conſtitution of Parliaments, and to ſubvert the eſtabliſhed Government of theſe Realms. And then *Ordered*, 'That all thoſe Gentlemen ſhould be taken into Cuſtody, as guilty

of promoting the ſaid Petition.' And on May the 14th, the Houſe being informed, that Mr. Thomas Colepepper had made his Eſcape, and that the reſt of the Perſons committed, did behave themſelves diſorderly; the Serjeant was called in, who acquainted the Houſe, that the ſaid Mr. Colepepper had on Saturday laſt made his Eſcape, and that ſome of the others had threatned, and he was apprehenſive of Force to reſcue them; and prayed the Direction of the Houſe concerning them: Whereupon, the Houſe ordered them to be delivered Priſoners to the Gate-Houſe; and agreed to addreſs his Majeſty, to iſſue his Proclamation for apprehending Mr. Colepepper, and for puttting out of the Commiſſions of the Peace and Lieutenancy, ſuch of the others as were in any of the ſaid Commiſſions. But Mr. Colepepper made a voluntary Surrender of himſelf, and was confined with his Neighbours. Anno 13 W. III. 1701.

Not long after this, another Dart was ſhot, and ſuppoſed from the ſame Quiver, at the Houſe; for the following Pamphlet, entitled by moſt People, *The* * *Legion Letter*, was ſent to the Speaker.

'Mr. Speaker,

'THE enclоſed Memorial you are charged with in the Behalf of many thouſands of the good People of England.

'There is neither Popiſh, Jacobite, Seditious, Court or Party-Intereſt concerned in it: but Honeſty and Truth. You are commanded by two hundred thouſand Engliſhmen, to deliver it to the Houſe of Commons, and to inform them that it is no Banter, but ſerious Truth; and a ſerious Regard to it is expected; nothing but Juſtice and their Duty is required; and it is required by them, who have both a Right to require, and Power to compel, *viz.* the People of England. The Legion Letter.

'We could have come to the Houſe ſtrong enough to oblige them to hear us, but we have avoided any Tumults, not deſiring to embroil, but to ſave our native Country.

'If you refuſe to communicate it to them, you will find cauſe in a ſhort time to repent it.'

To Robert Harley, Eſq;
Speaker to the Houſe of Commons,

Theſe.

The

* *Said to be written by Daniel De Foe.*

Anno 13 W. III. 1701.

The MEMORIAL.

To the Knights, Citizens, and Burgeſſes in Parliament aſſembled.

A Memorial, from the Gentlemen, Freeholders and Inhabitants of the Counties of ——— in Behalf of themſelves, and many thouſands of the good People of England.

' Gentlemen,

Legion Memorial.

'IT were to be wiſhed you were Men of that Temper, and poſſeſſed of ſo much Honour, as to bear with the Truth, though it be againſt you; eſpecially from us, who have ſo much right to tell it you: But ſince, even Petitions to you from your Maſters,—— (for ſuch are the People who choſe you) are ſo haughtily received, as with the committing the Authors to illegal Cuſtody, You muſt give us leave, to give you this fair notice of your Misbehaviour.

' If you think fit to rectify your Errors, you will do well, and poſſibly may hear no more of us; but if not, aſſure yourſelves, the Nation will not long hide their Reſentments. And though there are no ſtated Proceedings to bring you to your Duty, yet the great Law of Reaſon ſays, and all Nations allow, that whatever Power is above Law, is burdenſome and tyrannical, and may be reduced by extrajudicial Methods. You are not above the People's Reſentments, they that made you Members, may reduce you to the ſame Rank from whence they choſe you; and may give you a Taſte of their abuſed Kindneſs, in Terms you may not be pleaſed with. When the People of England aſſembled in Convention, preſented the Crown to his preſent Majeſty, they annexed a Declaration of the Rights of the People, in which was expreſſed what was illegal and arbitrary in the former Reign, and what was claimed as of Right to be done by ſucceeding Kings of England.'

' In like manner, here follows, Gentlemen, a ſhort Abridgment of the Nation's Grievances, and of your illegal and unwarrantable Practices; and a *Claim of Right*, which we make in the Name of ourſelves, and ſuch of the good People of England, as are juſtly alarmed at your Proceedings.

' 1. To raiſe Funds for Money, and declare, by borrowing Clauſes, that whoſoever advances Money on thoſe Funds, ſhall be reimburſed out of the next Aids, if the Funds fall ſhort; and then give ſubſequent Funds, without transferring the Deficiency of the former, is a horrible Cheat on the Subject who lent the Money, a Breach of public Faith, and deſtructive to the Honour and Credit of Parliaments.

1.

'2. To imprison Men who are not your own Members, by no Proceedings, but a Vote of your House, and to continue them in Custody, *sine die*, is illegal, a notorious Breach of the Liberty of the People, setting up a dispensing Power in the House of Commons, which your Fathers never pretended to; bidding Defiance to the *Habeas Corpus Act*, which is the Bulwark of Personal Liberty; destructive of the Laws, and betraying the Trust reposed in you. The King, at the same time, being obliged to ask you leave, to continue in Custody the horrid Assassinators of his Person. Anno 13 W. III. 1701.

'3. Committing to Custody those Gentlemen, who, at the Command of the People (whose Servants you are) came in a peaceable Way to put you in mind of your Duty, is illegal and injurious; destructive of the Subjects Liberty of Petitioning for Redress of Grievances, which has, by all Parliaments before you, been acknowledged to be their undoubted Right.

'4. Voting a Petition from the Gentlemen of Kent insolent, is ridiculous, and impertinent; because the Freeholders of England are your Superiors; and is a Contradiction in itself, and a Contempt of the English Freedom, and contrary to the Nature of Parliamentary Power.

'5. Voting People guilty of Bribery and ill Practices, and committing them as aforesaid, without Bail, and then, upon Submission and Kneeling to your House, discharging them, after exacting exorbitant Fees by your Officers, is illegal, betraying the Justice of the Nation, selling the Liberty of the Subjects, encouraging the Extortion and Villainy of Goalers and Officers, and discountenancing the legal Prosecution of Offenders in the ordinary Course of Law.

'6. Prosecuting the Crime of Bribery in some, to serve a Party, and then proceeding no further, though Proof lay before you, is partial, and unjust, and a Scandal upon the Honour of Parliaments.

'7. Voting the Treaty of Partition fatal to Europe, because it gave so much of the Spanish Dominions to the French, and not concerning yourselves to prevent their taking possession of it all: deserting the Dutch, when the French are at their doors, till it be almost too late to help them; is unjust to our Treaties, and unkind to our Confederates, dishonourable to the English Nation, and shews you very negligent of the Safety of England, and of our Protestant Neighbours.

'8. Ordering immediate Hearings to trifling Petitions, to please Parties in Elections; and postponing the Petition of a Widow, for the Blood of her murdered Daughter, without giving it a reading, is an illegal Delay of Justice, dishonourable to the public Justice of the Nation.

9.

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'9. Addreſſing the King to diſplace his Friends, upon bare Surmiſes, before the legal Trial, or any Article proved, is illegal, and inverting the Law, and making Execution go before Judgment; contrary to the true Senſe of the Law, which eſteems every Man a good Man, till ſomething appears to the contrary.

'10. Delaying Proceedings upon capital Impeachments, to blaſt the Reputation of the Perſons, without proving the Fact, is illegal and oppreſſive, deſtructive to the Liberty of Engliſhmen, a Delay of Juſtice, and a Reproach of Parliaments.

'11. Suffering ſaucy, indecent Reproaches upon his Majeſty's Perſon, to be publicly made in your Houſe, particularly that impudent Scandal of Parliaments John How, without ſhewing ſuch Reſentments as you ought to do; the ſaid John How ſaying openly, That his Majeſty had made a felonious Treaty to rob his Neighbours; inſinuating that the Partition Treaty (which was every way as juſt as blowing up one Man's Houſe to ſave another's) was a Combination of the King to rob the Crown of Spain of its due: This is making a Billingſgate of the Houſe, and ſetting up to bully your Sovereign, contrary to the Intent and Meaning of the Freedom of Speech, which you claim as a Right; is ſcandalous to Parliaments, undutiful and unmannerly, and a Reproach to the whole Nation.

'12. Your Speaker exacting the exorbitant Rate of 10l. *per diem* for the Votes, and giving the Printer Encouragement to raiſe it on the People, by ſelling them at 4d. *per* Sheet, is an illegal and arbitrary Exaction, diſhonourable to the Houſe, and burdenſome to the People.

'13. Neglecting to pay the Nation's Debts, compounding for Intereſt, and poſtponing Petitions, is illegal, diſhonourable, and deſtructive of the public Faith.

'14. Publicly neglecting the great Work of Reformation of Manners, though often preſſed to it by the King, to the great Diſhonour of God and Encouragement of Vice, is a neglect of your Duty, and an Abuſe of the Truſt repoſed in you by God, his Majeſty, and the People.

'15. Being ſcandalouſly vicious yourſelves, both in your Minds and Religion, lewd in Life, and erroneous in Doctrine, having public Blaſphemers, and impudent Denyers of our Saviour's Divinity among you, and ſuffering them unreproved and unpuniſhed, to the infinite regret of all good Chriſtians, and the juſt Abhorrence of the whole Nation.

'Wherefore, in a ſad Proſpect of the impending Ruin of our native Country, while Parliaments (which ought to be the Security and Defence of our Laws and Conſtitution) betray their Truſt, and abuſe the People whom they ſhould protect,

protect: And no other Way being left us, but the Force which we are very loth to make uſe of, that Poſterity may know we did not inſenſibly fall under the Tyranny of a prevailing Party, we do hereby claim and declare, Anno 13 W. III. 1701.

'1. That it is the undoubted Right of the People of England, in caſe their Repreſentatives in Parliament do not proceed according to their Duty, and the People's Intereſt, to inform them of their diſlike, diſown their Actions, and to direct them to ſuch things as they think fit, either by Petition, Addreſs, Propoſal, Memorial, or any other peaceable Way.

'2. That the Houſe of Commons, ſeparately, and otherwiſe than by Bill legally paſſed into an Act, have no legal Power to ſuſpend, or diſpenſe with, the Laws of the Land, any more than the King has by his Prerogative.

'3. That the Houſe of Commons have no legal Power to impriſon any Perſon, or commit them to the Cuſtody of Serjeants, or otherwiſe, (their own Members excepted) but ought to addreſs the King to cauſe any Perſon, on good Grounds, to be apprehended; which Perſon ſo apprehended ought to have the Benefit of the *Habeas Corpus Act*, and be fairly brought to a Trial by due Courſe of Law.

'4. That, if the Houſe of Commons, in Breach of the Laws and Liberties of the People, do betray the Truſt repoſed in them, and act negligently, arbitrarily and illegally; it is the undoubted Right of the People of England to call them to an Account for the ſame; and by Convention, Aſſembly, or Force, may proceed againſt them as Traitors and Betrayers of their Country.

'Theſe things we think proper to declare, as the undoubted Right of the People of England, whom you ſerve. And in purſuance of that Right avoiding the Ceremony of Petitioning our Inferiors, for ſuch you are by your preſent Circumſtances, (as the Perſon ſent is leſs than the Sender) we do publicly proteſt againſt all your aforeſaid Actions; and, in the Name of ourſelves, and all the good People of England, do require and demand,

'1. That all the public juſt Debts of the Nation be forthwith paid and diſcharged.

'2. That all Perſons illegally impriſoned, as aforeſaid, be either immediately diſcharged, or admitted to Bail, as by Law they ought to be; and the Liberty of the Subject recognized and reſtored.

'3. That John How aforeſaid, be obliged to ask his Majeſty pardon for his vile Reflections, or be immediately expelled the Houſe.

'4. That the growing Power of France be taken into Conſideration, the Succeſſion of the Emperor to the Crown

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of Spain ſupported, and our Proteſtant Neighbours protected as the true Intereſt of England and the Proteſtant Religion requires.

'5. That the French King be obliged to quit Flanders, or that his Majeſty be addreſſed to declare War againſt him.

'6. That ſuitable Supplies be granted to his Majeſty, for the putting all thoſe neceſſary things in execution; and that care be taken, that ſuch Taxes as are raiſed, be more equally aſſeſſed and collected, and ſcandalous Deficiencies prevented.

'7. That the Thanks of the Houſe may be given to thoſe Gentlemen, who ſo gallantly appeared in the Behalf of their Country with the Kentiſh Petition, and have been ſo ſcandalouſly uſed for it.

'Thus, Gentlemen, you have your Duty laid before you, which 'tis hoped you will think of: but if you continue to neglect it, you may expect to be treated according to the Reſentments of an injured Nation; for Engliſhmen are no more to be Slaves to Parliaments, than to Kings.

Our Name is Legion:

And we are Many.

'P.S. If you require to have this Memorial ſigned with our Names, it ſhall be done on your firſt Orders, and perſonally preſented.'

Vote thereon.

The Conſequence of this was, that a Complaint was made to the Houſe, of Endeavours to raiſe Tumults and Seditions, in order to diſturb the Public Affairs, and a Committee was appointed to draw up an Addreſs to the King humbly to lay before him the Endeavours of ſeveral ill-diſpos'd Perſons to raiſe Tumults and Seditions in the Kingdom, and humbly to beſeech his Majeſty that he will provide for the public Peace and Safety.

If Mens Tongues began to be looſe before, they were much more now, upon the Impriſonment of the Kentiſh Gentlemen: Some would have this to be the greateſt Outrage upon the People's Liberty imaginable, alledging it was their undoubted Right to petition; and at this Rate we had better fall under the Oppreſſions of one, than ſo many. What did the *Habeas Corpus Act* ſignify? That it looked as if the Nation were betrayed, and England bought and ſold: Nay, ſomebody was ſo audacious, as to fix a Bill on the Houſe of Commons Door, importing, *That this Nation is to be ſold, enquire within:* While others, on their part ſaid, the Houſe of Commons was a Branch of the Government; that all Governments were abſolute, in their Nature and Conſtitution, and ſo muſt the Commons in their reſpective Share of it.

To

To return to the unhappy Difference between the two Houſes, in the Caſe of the impeached Lords; the Houſe of Peers ſeemed to think, that their Members had been impeached by the Commons, without a ſerious Intention to proſecute the Charge againſt them. And therefore on May the 5th, their Lordſhips ſent this quickening Meſſage to the Commons, by Sir Robert Legard, and Sir Richard Holford. Anno 13 W. III. 1701.

Difference between the two Houſes upon the Matter of Impeachment.

'Mr. Speaker, The Lords have commanded us to acquaint this Houſe, that they having on the firſt day of April laſt, ſent up to their Lordſhips an Impeachment againſt William Earl of Portland, of high Crimes and Miſdemeanors; and having alſo on the fifteenth day of the ſame Month, ſeverally impeached John Lord Somers, Edward Earl of Orford, and Charles Lord Hallifax, of high Crimes and Miſdemeanors: Their Lordſhips think themſelves obliged to put this Houſe in mind, that as yet no particular Articles have been exhibited againſt the ſaid Lords; which, after Impeachments, have been ſo long depending, is due in juſtice to the Perſons concerned, and agreeable to the Methods of a Parliament in ſuch Caſes.'

The Commons aſhamed to be upbraided with Delay, in a Matter wherein they had appeared ſo forward, ſent anſwer, that Articles againſt the Lords impeached were preparing, and in a ſhort time ſhould be ſent up to the Houſe of Lords. So on May the 9th, to begin their own way, the Commons, by Colonel Bierly, ſent up Articles againſt Edward Earl of Orford, in Maintenance of their Impeachment.

Articles of Impeachment againſt the Earl of Orford, together with his Replies.

'1. That in a long and expenſive War, the ſaid Earl always preferring his private Intereſt to the Good of the Public, in Violation of his Duty and Truſt, had procured from his Majeſty one or more Grant or Grants of ſeveral Manors, Meſſuages, &c. and alſo exorbitant Sums of Money.'— To which the Earl anſwered, 'That he having for ſeveral Years rendered to his Majeſty his utmoſt Service and Duty as a good and loyal Subject, his Majeſty was graciouſly pleaſed, upon ſeveral Occaſions, to take notice of the ſame: and out of his wonted Bounty, and his free Will, was pleaſed to give to the Earl two Grants, one a Reverſionary Grant for Years, of ſome Houſes; the other Grant of the Remainder of a groſs Sum, amounting to about 2000 l. a Year for five Years.'

'2. That in breach of the Truſt repoſed in him, whilſt he was Commander-in-Chief of the Navy Royal of England, in, or near the Streights of Gibraltar, he did receive great Sums of the public Money, which he converted to his own private Uſe, and unlawfully procured a Privy-Seal, to diſcharge him from accountingto the Public for the ſame.—To

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which he anſwered, by denying the ſaid Facts, and ſaying, 'That he did make up, and upon Oath paſs his Accounts for the Moneys impreſt to him, and hath his *quietus eſt* in due Courſe of Law upon the ſame.'

'3. That he did receive from the King of Spain and others, conſiderable Sums of Money, and great Quantities of Wine, Oil, and other Proviſions for the Fleet, which he ought to have accounted for, but he converted the ſame to his own Uſe: And for ſecuring himſelf from rendering any Account, he poſſeſs'd divers great Offices inconſiſtent, and deſigned as Checks one upon the other.'—To which the Earl anſwered, 'That whatever he received from the King of Spain, or any other for the Fleet, was duly delivered and diſtributed amongſt the Officers and Seamen; and he denies, that he did enjoy any Offices inconſiſtent, or which ought to be Checks one upon the other.'

'4. That he hath clandeſtinely, contrary to the Law of Nations, ſold and diſpoſed of ſeveral Veſſels, taken under Pretence of Prize, without Condemnation or judicial Proceedings, and converted the Money to his own Uſe.'—To which he anſwered, by denying the Fact, and ſaying, 'That he did from time to time give Orders that the Prizes taken ſhould be carefully preſerved, without Embezzlement, and duly proceeded againſt, and the Product anſwered as the Law directs.'

'5. That he, preſiding in the Commiſſion for Executing the Office of Lord High-Admiral of England, had diſcouraged and rejected the Requeſt and Propoſal of the Company trading to the Eaſt-Indies, for ſuppreſſing Piracies in the South-Seas; and had procured a Commiſſion for one William Kidd, who had committed divers Piracies and Depredations on the High-Seas, being thereto encouraged thro' the Hopes of being protected by the high Station and Intereſt of the ſaid Earl.'—To which he anſwered, 'That he did never diſcourage or reject the Company's Requeſt, unleſs it were by telling them, that the Admiralty, by Law, could not grant the ſame: And as to the Matter of Kidd, his Commiſſion was according to Law, and his Expedition intended for the public Good and Service; and if he hath committed any Piracies, is anſwerable for the ſame; he never being ordered or encouraged by the ſaid Earl ſo to do.'

'6. That while the Kingdom was under an Apprehenſion of an immediate Invaſion from France, he, preferring his hopes of Gain to himſelf, to the Safety of the Public, did order Capt. Stewart, Commander of the Ship Dutcheſs, to deliver over, and put on board the ſaid Kidd, a great Number of able Seamen, to the prejudice of the public Security, and to the endangering the ſaid Ship the Dutcheſs, if it had been

been attacked by the Enemy.'——To which he anſwered, 'That the Men taken from on board the Dutcheſs, were but ſome of the very Perſons that were juſt before taken from on board of Captain Kidd, and returned by their own Conſent again, not being above twenty in number; and that, when all Fears of an Invaſion were over and at an end.' Anno 13 W. III. 1701.

'7. That during the War, he did, by Miſrepreſentations, procure a Grant or Order for his Majeſty's Ship the Dolphin, then fitted out, manned and equipped for the Service of the Public, to be employed in a private Voyage and Undertaking, for the Advantage of himſelf and others concerned with him.'—To which he anſwered, 'That what was done therein was done after the Peace concluded, and by his Majeſty's Command, at the Inſtance and Requeſt of other Perſons, and not of the ſaid Earl, but contrary to his Opinion.'

'8. That, during the time of his commanding the Navy Royal, he did, through Neglect, and in Contempt of Orders, unneceſſarily hazard and expoſe the Navy, and loſe the Opportunities of taking or deſtroying the French Ships, and ſuffer them to return ſafe into their own Harbours.'—To which he anſwered, 'That he is not guilty of any Neglect or Omiſſion of his Duty herein, nor did expect, in this Particular, to be charg'd therewith, conſidering his faithful Services rendered againſt the French Fleet.'

'9. That he did, in Concert with other falſe and evil Counſellors, adviſe our ſovereign Lord the King, in the Year 1698, to enter into one Treaty for dividing the Monarchy and Dominions of *Spain*; in purſuance whereof, in 1699, another Treaty was entered into to the like Purpoſe: both which Treaties were prejudicial to the Intereſt of the Proteſtant Religion, *&c*'—To which he anſwered, 'He does deny that he did adviſe his Majeſty to enter into the Treaty of Partition; but ſo far as he was any ways acquainted therewith, he objected to, and gave his Opinion againſt the ſame.'

'10. That he was one of the Lords Juſtices, firſt Commiſſioner in the Admiralty, Commander in Chief of the Navy, one of his Majeſty's Privy-Council, and Treaſurer of his Majeſty's Navy; or in ſome, or one of theſe Stations, during the time that all and every the Crimes before ſet forth were done and committed.'—To which he anſwered, 'That his Majeſty was pleaſed to entruſt him in the ſeveral Offices and Stations, which he had diſcharged with Loyalty, Faithfulneſs and Zeal to his Majeſty and his People.'

On May the 19th, the Commons, by Mr. Harcourt, ſent up Articles of Impeachment againſt John Lord Somers.

1ſt.

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Articles againſt the Lord Somers, with his Replies.

'1ſt. That well knowing the moſt apparent evil Conſequences, as well as the Injuſtice of the Partition of the Spaniſh Monarchy, he did adviſe his Majeſty to enter into a Treaty for it; and did ſo far encourage and promote the ſame, that the ſaid Treaty was concluded and ratified in 1698, under the Great-Seal of England, then in Cuſtody of the ſaid Lord Somers.—To which his Lordſhip anſwered, in a full and plain Account of all the Steps of that Treaty, referring himſelf to the Letters on that Subject between his Majeſty and him (before-recited) 'wherein, as he conceived, he had fully and faithfully diſcharged his Truſt, and the Duty incumbent on him.'

'2d, That for the more effectual carrying on the ſaid Treaty, Commiſſions were prepared, amended, enlarged or altered by the ſaid Lord Somers, without any lawful Warrant for his ſo doing; whereunto, without communicating the ſame to the reſt of the then Lords Juſtices of England, or adviſing with the Privy-Council, he did preſume to affix the Great-Seal of England, with a Blank for Commiſſioners Names to be afterwards inſerted.'

'3d, That having affixed the Great-Seal without lawful Warrant, in hopes of concealing that evil and moſt dangerous Practice, after he had ſettled the ſaid Commiſſions, he uſed his Endeavour to procure a Warrant to be tranſmitted to him, for affixing the Great-Seal, that it might not be known, but that he had it in due time'——To which ſecond and third Articles he anſwered, 'That having received his Majeſty's expreſs Commands, to ſend to his Majeſty full Power under the Great Seal for negociating the ſaid Treaty, with Blanks for his Majeſty's Commiſſioners Names, he thought it ſufficient Warrant for him ſo to do. And that he did afterwards deſire his Majeſty that a particular Warrant for ſigning the ſaid Commiſſion might be ſigned and returned; not that he doubted his Majeſty's ſaid Letter to be a ſufficient Warrant, but for that ſuch Warrant would be more proper to be produced, if Occaſion ſhould require.'

'4th, That, contrary to his Duty, he affixed the Great-Seal of England to the Ratification of the ſaid Treaty in 1698, not having communicated the ſame to the reſt of the then Lords Juſtices, or adviſed with the Privy-Council, leaving one entire blank Sheet, and many other Blanks in the ſaid Ratification, with an Intent to be afterwards filled up by other Perſons beyond the Seas.'—To which he anſwered, 'That Mr. Secretary Vernon having prepared, by his Majeſty's Commands, the Inſtruments for Ratification, with Blanks therein, he did affix the Great-Seal; which he conceives and is adviſed he might lawfully do, not communicating

cating the ſame, becauſe he had his Majeſty's Command that the ſaid Treaty ſhould be kept ſecret.' Anno 13 W. III. 1701.

'5th, That in the Year 1699, another Treaty of Partition was concluded and ratified under the Great Seal, then in the Cuſtody of the ſaid Lord Somers, diſhonourable to his Majeſty, highly injurious to the Intereſt of the Proteſtant Religion, &c.'——To which he anſwered, 'That a Draught of the ſaid Treaty being read over in the Preſence of divers of the Lords of the Privy-Council, he, the ſaid Lord Somers, as well as others then preſent, did make ſeveral Objections; but they were informed by his Majeſty's Plenipotentiaries for tranſacting this Treaty, who were alſo then preſent, that the ſaid Treaty was ſo far perfected, that nothing could be altered therein; and his Majeſty afterwards, by Warrant ſo requiring, he did affix the Great-Seal, being, as he conceives, obliged to do it.'

'6th, That whereas by the Laws and Uſages of this Realm, all Commiſſions under the Great-Seal, for the making any Treaty or Alliance, ought to be enrolled, and entred on Record in the Court of Chancery; he, the ſaid Lord Somers, not minding the Duty of his Office, did not in any manner enroll, or enter on Record, any of the ſaid Commiſſions or Ratifications.'——To which he anſwered, 'He conceives it was not incumbent upon him as Lord Chancellor, to ſee the Commiſſions or Ratifications enrolled; but the Care of enrolling the ſame, if neceſſary, doth belong to the Prothonotary of the Court of Chancery.'

'7th, That the ſaid Lord Somers, contrary to his Oath as Lord Chancellor of England, did paſs many great, unreaſonable and exorbitant Grants, under the Great-Seal, of divers Manors, Lordſhips, &c. belonging to the Crown of England; and did adviſe, promote and procure divers like Grants of the late Forfeited Eſtates in Ireland, in Contempt of the Advice of the Commons of England.'——To which he anſwered, 'He doth acknowledge, he did paſs ſeveral Grants, &c. but the ſame were regularly paſſed through the proper Offices, and brought with ſufficient Warrants for the Great-Seal; and believes more conſiderable Grants have paſſed in like Number of Years, in moſt of his Predeceſſors times.

'8th, That he did not only receive and enjoy the Fees, Profits and Perquiſites, belonging to the Great Seal, but had received an annual Penſion from the Crown of 4000 *l.* and had further begged and procured for his own Benefit, many great, unreaſonable, and exorbitant Grants of Revenues belonging to the Crown of England.'——To which he anſwered, 'That the annual Penſion or Allowance of 4000 l. had been allowed to ſeveral of his Predeceſſors; but denies, he did

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ever beg, or uſe any Means or procure any Grant whatſoever for his own Benefit; but what his Majeſty pleaſed to give him, proceeded from his Majeſty's own Motion, and of his mere Bounty; and, as his Majeſty was pleaſed to declare upon that Occaſion, as an Evidence of the gracious Acceptation of the ſaid Lord *Somers*'s zealous Endeavours for his Service.'

'9th, That in order to procure a Grant of the ſaid Fee-farm Rents, he did enter into ſeveral Treaties, and had many Communications with the Auditor of the Rates, and with the Clerk of the Truſtees for the Sale of the ſaid Rents, and contracted and agreed with them, as a Reward for their Diſcovery, one full fourth Part of all ſuch Rents ſo diſcovered.'

'10th, That, notwithſtanding the ſaid pretended Contracts, there was not any Sum of Money really paid, but the Contracts and Payments colourably and fraudulently contrived, in Deceit of his Majeſty, and Eluſion of the Acts of Parliament.'——To which 9th and 10th Articles he anſwered, 'That after his Majeſty had given Directions to the Lords of the Treaſury, for granting Fee-farm Rents to the Benefit of him and his Heirs; his Majeſty's intended Bounty would have been loſt, without Information could be gained of ſuch particular Rents: And therefore Application was made to the ſaid Auditor and Clerk, as the moſt likely to give Information therein; but they did refuſe to give any Account of ſuch Rents, unleſs they might have near a fourth Part for ſo doing; which the ſaid Lord Somers did, as he conceives he lawfully might, comply with. And there was not any Sum of Money paid, as the Conſideration of the Grants of the ſaid Rents, but the Contracts were made, and the Payment diſcharged, without any Deceit of his Majeſty, or Eluſion of Acts of Parliament.'

'11th, That many Rents ſtanding in Charge for Payment of Penſions, Stipends, Salaries, Annuities, Alms, and Allowances for Schools, Churches, Bridges, &c. and many Quit-Rents of Mannors united and annexed to the Caſtle of Windſor, for Support of the ſame, and Maintenance of the Officers, Servants, and Attendants in the ſaid Caſtle, were conveyed by the ſaid Truſtees, through the Direction and Power of the ſaid Lord Somers, contrary to the true Intent and Meaning of the ſaid Acts of Parliament, to the great Vexation and Oppreſſion of many of his Majeſty's good Subjects, and creating many new and unreaſonable Charges on other Revenues of the Crown.' —To which he anſwered, 'That ſome things might be inſerted by miſtaken Informations, and not out of any Deſign; he denies that as to his Knowledge or Belief, any of the ſaid Rents were ever united

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or annexed to the Caſtle of Windſor, for any purpoſe whatſoever; or that any Oppreſſion or Vexation hath happened; and little or no new Charge to the Crown.' Anno 13 W. III. 1701.

'12th, That by the Direction of the ſaid Lord Somers, the Perſons in whoſe Names the Purchaſes were made, did ſurrender ſeveral of the ſaid Rents to them granted, amounting to the Yearly value of 347 l. 11 s. 5 d. on Suggeſtion of wrong Conveyance; and procured other Rents of the Yearly Value of 391 l. 11 s. 3 d. to be allowed by way of reprize, as if the ſaid Rents ſo ſurrendered had been really and *bona fide* purchaſed.'——To which he anſwered, 'That the Truſtees for Sale of the Fee-Farm Rents, by Warrant of the Commiſſioners of the Treaſury, did grant divers other Rents, amounting to 391 l. in lieu and reprize of the 347 l. having appeared to be granted before, or not grantable by the ſaid Truſtees, or not leviable on Surrenders of ſuch Rents; which he conceives might be and was lawfully done.'

'13th, That in the Year 1695, the ſaid Lord Somers, being then Lord-Keeper, procured a Commiſſion to be granted to one William Kidd, a Perſon of evil Fame and Reputation, and ſince that time convicted of Piracy; and in a Grant from his Majeſty, of Ships, Veſſels and Goods to be taken by the ſaid William Kidd, unto Richard Earl Bellamont, Edmund Harriſon, Merchant, Samuel Newton, Gent. and others, the Name of the ſaid Samuel Newton was uſed in Truſt, and for the only Benefit and Advantage of the ſaid Lord Somers.'—— To which he anſwered, 'That the ſaid William Kidd had from his Majeſty a Commiſſion for preventing the Piracy of others, and to apprehend certain Pirates, and bring them to a legal Trial; the granting of which Commiſſion was then apprehended to be neceſſary for the Preſervation of Trade and Navigation. He does admit there was a Grant to the Earl of Bellamont, Edmund Harriſon, and Samuel Newton, who was named by and in Truſt for the ſaid Lord Somers, of Ships and Goods, taken by the ſaid William Kidd, with Account to be duly made to the Uſe of his Majeſty, of a clear tenth Part, whereby the Public might have received Benefit, had the ſaid Kidd faithfully diſcharged the Truſt; which he failing to do, the Owners of the ſaid Ship have loſt all their Expences.'

'14th, that as Lord Chancellor, he had, in ſeveral Cauſes depending before him, by many extraordinary Methods, and unwarrantable Practices, for ſeveral Years, delayed Proceedings in the ſaid Cauſes; and, by colour of his Office, had made divers arbitrary and illegal Orders, and had, of his own Authority, reverſed Judgments given in the Court of Exchequer, without calling the Barons before him: And had declared and affirmed in public Places of Judicature,

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that particular Subjects might have Rights, and Interests, without any Remedy for Recovery of the same, unless by Petition to the Person of the King only, or to that effect: Which Position was highly dangerous to the legal Constitution of this Kingdom, and absolutely destructive to the Property of the Subject.' To which he answer'd, 'That he did not delay any Proceedings longer, or otherwise than as the Circumstances and Justice of each Cause required; nor did he ever make any arbitary or illegal Order, or ever reverse any Judgment given in the Court of Exchequer, otherwise than it is warranted and allowed by the Law: Nor did ever deliver any Position whatsoever, dangerous to the legal Constitution, or destructive to the Property of the Subjects.'

A Copy of the Lord Somers's Answer was with great Dispatch delivered to the Commons on May the 24th. In the mean time, on the 21st, the Lords had sent down this second Message.

Second Message from the Lords

'Mr. Speaker, the Lords command us to acquaint this House, that their Lordships having been desired by the Earl of Orford, that a Day might be appointed for his speedy Trial, their Lordships finding no issue joined by Replication of this House, think fit to give Notice thereof to this House:

'They also commanded us to acquaint this House, that they having, on the first of April last, sent up an Impeachment to their Lordships, against William Earl of Portland, for high Crimes and Misdemeanours; and having also, on the 15th of the same Month, impeached Charles Lord Hallifax, for high Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is not agreeable to the usual Methods and Proceedings of Parliaments in such Cases.'

The Commons then prepared this Replication to my Lord of Orford's Answer.

Replication of the Commons to the Earl of Orford.

'The Commons have considered the Answer of Edward Earl of Orford, to the Articles of Impeachment exhibited against him by the Knights, Citizens and Burgesses assembled in Parliament, and do aver their Charge of high Crimes and Misdemeanours against him to be true, and that the said Earl is guilty in such manner as he stands accused and impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that purpose.'

And, on the 31st, they sent this Answer to the Lords:

Their Answer to the Lords.

'In Answer to your Lordships Message of the 21st Instant, the Commons have prepared a Replication to the Earl of Orford's Answer to the Articles of Impeachment of high Crimes and Misdemeanours, exhibited against him; and at present

preſent defer bringing it up to your Lordſhips, becauſe, in the Trial of the ſeveral Impeachments now depending, the Commons think it moſt proper, from the nature of the Evidence that will be given at the ſaid Trials, to begin with the Trial of the Impeachment of John Lord Somers, of high Crimes and Miſdemeanours. Anno 13 W. III. 1701.

'And as to your Lordſhips other Meſſage, the Commons take it to be without Precedent and unparliamentary: They, as Proſecutors, having a liberty to exhibit their Articles of Impeachment in due time, of which they, who are to prepare them, are the proper Judges; and therefore, for your Lordſhips to aſſert, that having not yet exhibited particular Articles againſt William Earl of Portland, and Charles Lord Hallifax, is a hardſhip to them, and not agreeable to the uſual Methods and Proceedings in Parliament in ſuch Caſes; does, as they conceive, tend to the Breach of that good Correſpondence betwixt the two Houſes, which ought to be mutually preſerved.'

On the ſame Day, 31ſt May, Sir John Hoskyns, and Sir Robert Legard brought this Meſſage to the Commons.

'Mr. Speaker, the Lords have commanded us to acquaint this Houſe, that their Lordſhips have appointed Monday the 9th Day of June next, for the Trial of Edward Earl of Orford, upon the Articles brought up againſt him by this Houſe in Weſtminſter-Hall; and that this Houſe may reply, if they think fit. Third Meſſage from the Lords.

'They have alſo commanded us to acquaint this Houſe, that this Houſe having, on the firſt Day of April laſt, ſent up to their Lordſhips an Impeachment againſt William Earl of Portland, for high Crimes and Miſdemeanours; and having alſo, on the 15th Day of the ſame Month, impeached Charles Lord Hallifax for high Crimes and Miſdemeanours; and there being as yet no particular Articles exhibited againſt the ſaid Lords, their Lordſhips think themſelves obliged to put this Houſe in mind thereof; which, after Impeachments have ſo long depended, is a hardſhip to the Perſons concerned, and not agreeable to the uſual Methods of Parliament in ſuch Caſes.'

The Commons, on the 5th of June, returned this Anſwer.

'The Commons, on Conſideration of your Lordſhips Meſſage to them of the 31ſt of May, concerning the Earl of Orford, think it their undoubted Right, when ſeveral Perſons ſtand impeached before your Lordſhips, to bring to Trial ſuch of them in the firſt place, as the Commons apprehend, from the Nature of the Evidence, ought firſt to be proceeded againſt, to the intent all ſuch Offenders may in due time be brought to Juſtice; and that no Day ought to be appointed by your Lordſhips for the Trial of any Impeachment by the Commons, without ſome previous ſignifi- Anſwer of the Commons.

Anno 13 W. III. 1701.

cation to your Lordſhips from the Commons, of their being ready to proceed thereon.

'The Commons could not receive this Meſſage from your Lordſhips, without the greateſt ſurprize; your Lordſhips Proceedings in this Caſe, being neither warranted by Proceedings, nor (as the Commons conceive) conſiſtent with the Methods of Juſtice, or with Reaſon: Wherefore the Commons cannot agree to the Day appointed by your Lordſhips, for the Trial of the Earl of Orford.

'As to your Lordſhips Meſſage at the ſame time, relating to the Earl of Portland, and Charles Lord Halliſax, the Commons take the ſame to be without Precedent, and unparliamentary; and conceive your Lordſhips frequent Repetition thereof, in a ſhort time, after the Commons had tranſmitted to your Lordſhips their Articles againſt two of the impeached Lords, and were daily preparing their Articles againſt the others, manifeſtly tends to the Delay of Juſtice in obſtructing the Trials of the impeached Lords, by introducing Diſputes, in Breach of that good Correſpondence between the two Houſes, which ought inviolably to be preſerved.'

In the mean time, the Lords, on the fourth, accoſted them with another Meſſage to this purpoſe.

Fourth Meſſage from the Lords.

'Mr Speaker, The Lords do think fit, upon Occaſion of the Meſſage from this Houſe of the 21ſt of May, to acquaint this Houſe, that having been deſired by the Lord Somers, that a Day may be appointed for his ſpeedy Trial, and their Lordſhips, finding no iſſue joined by Replication of the Houſe of Commons, judge it proper to give them notice thereof, that the Commons may reply if they think fit. And at the ſame time, their Lordſhips let the Commons know, that they will proceed to the Trial of any of the Impeached Lords whom the Commons ſhall be firſt ready to begin with, ſo as there may be no Occaſion taken from thence, for any unreaſonable Delay in the Proſecution of any of them: And further to acquaint them, having ſearched their own Journals, they do not find, that, after a general Impeachment, there has ever been ſo long a Delay of bringing up the particular Articles of Impeachment, ſitting the Parliament: And therefore the Lords do think, they had reaſon to aſſert, that it was a hardſhip to the two Lords concerned (eſpecially when their Lordſhips had put the Houſe of Commons in mind of exhibiting ſuch Articles) and not agreeable to the uſual Proceedings in Parliament. And as the Lords do not controvert what Right the Commons may have, of impeaching in general terms, if they pleaſe; ſo the Lords, in whom the Judicature does entirely reſide, think themſelves obliged to aſſert, that the Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding Delay in Juſtice, is lodged in them. 'The

'The Lords hope, the Commons, on their part, will be as careful not to do any thing, that may tend to the Interruption of the good Correſpondence between the two Houſes, as the Lords ſhall ever be on their part; and the beſt way to preſerve that, is, for neither of the two Houſes to exceed thoſe Limits, which the Law and Cuſtom of Parliament have already eſtabliſhed.' Anno 13 W. III. 1701.

Conference between the two Houſes open'd by Mr. Harcourt.

The Commons hereupon, June the ſixth, deſired a Conference with the Lords, upon the Subject-Matter of the ſaid Meſſage; at which Mr. Harcourt delivered himſelf in this manner:

'The Commons have deſired this Conference, upon your Lordſhips Meſſage of the fourth of June, in order to preſerve a good Correſpondence with your Lordſhips, which will always be the Endeavour of the Commons, and is at this time particularly neceſſary, in order to bring the impeached Lords to a ſpeedy Trial. And becauſe the Meſſages which your Lordſhips have thought fit to ſend to the Commons, and the Anſwers thereunto, ſeem not to tend towards expediting the Trials, which the Commons ſo much deſire, but may rather furniſh matter of diſpute between the two Houſes; the Commons therefore chuſe to follow the Methods formerly uſed with good Succeſs upon the like Occaſion; and for the more ſpeedy and eaſy adjuſting and preventing any differences which have already happened, or may ariſe, previous to, or upon thoſe Trials, the Commons do propoſe to your Lordſhips, that a Committee of both Houſes be nominated, to conſider of the moſt proper Ways and Methods of proceeding on Impeachments, according to the uſage in Parliaments in ſuch Caſes.'

The Conference being ended, the Lords, on the ninth, ſent the following Meſſage to the Commons.

Fifth Meſſage from the Lords.

'In Anſwer to the Meſſage of the Houſe of Commons of the fourth Inſtant, the Lords ſay, by their Meſſage ſent on the third, wherein they declare themſelves ready to proceed to the Trial of any of the impeached Lords, whom the Commons ſhall be firſt ready to begin with; they have given a full Proof of their willingneſs to comply with the Commons, in any thing which may appear reaſonable, in order to the ſpeedy determining of the Impeachments now depending; and therefore, as the Lords conceive, the Commons had no Occaſion to begin the Diſpute on that head, ſo their Lordſhips decline entering into a Controverſy, which ſeems to them to be of no Uſe at preſent.

'The Lords think themſelves obliged to aſſert their undoubted Right, to appoint a Day for the Trial of any Impeachment depending before them, if they ſee good Cauſe for it, without any previous ſignification from the Commons of their being ready to proceed; which Right is warranted by

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by many Precedents, as well as conſonant to Juſtice and Reaſon. And their Lordſhips, according to the Example of their Anceſtors, will always uſe that Right, with a Regard to the equal and impartial Adminiſtration of Juſtice, and with a due care to prevent unreaſonable Delays.

'This being the Caſe, the Lords cannot but wonder, that the Commons, without any Foundation for it, ſhould make uſe of Expreſſions, which, as their Lordſhips conceive, have never been uſed before by one Houſe of Parliament to another; and which, if the like were returned, muſt neceſſarily deſtroy all good Correſpondence between the two Houſes.

'The laſt Part of the Commons Meſſage, being in effect a repetition only of their former of the 21ſt of May, to which the Lords already have returned a full Anſwer, their Lordſhips think it not requiſite to ſay any more, than that they cannot apprehend with what Colour their calling upon the Houſe of Commons, to ſend up Articles againſt two Lords, whom the Commons have ſo long impeached in general Terms, can be ſaid to tend to the delay of Juſtice. And therefore, as the Lords think, the Commons ought to have forborn that Reflection, ſo their Lordſhips, in ſaying no more upon the Occaſion of this Meſſage of the Commons, think they have given a convincing Proof of their Moderation, and of their ſincere Deſire of preſerving a good Correſpondence between the two Houſes; which is ſo neceſſary for the public Security, as well as doing right upon the Impeachment.'

The Commons anſwered them next Day to this effect:

Anſwer of the Commons.

'The Commons, in hopes of avoiding all Interruptions and Delays, in proceeding againſt the impeached Lords, and the many Inconveniencies which might ariſe thereby, having propoſed to your Lordſhips, at a Conference, that a Committee of both Houſes might be nominated, to conſider of the moſt proper Ways and Methods of proceeding on Impeachments, think, they might juſtly have expected your Lordſhips Compliance with their ſaid Propoſition, inſtead of your Lordſhips Anſwer to their Meſſage of the fourth Inſtant, which they Yeſterday received. In which Anſwer of your Lordſhips, though many Matters of great exception are contained, a ſuitable Reply whereunto would inevitably deſtroy all good Correſpondence between the two Houſes; yet the Commons, from an earneſt deſire to preſerve the ſame, as well as to give the moſt convincing Proof of their Moderation, and to ſhew their readineſs to bring the impeached Lords to ſpeedy Juſtice, at preſent inſiſt only on their Propoſition, of both Houſes to ſettle and adjuſt the neceſſary Preliminaries to the Trials; particularly, whether the impeached Lords ſhall appear at their Trials at your Lordſhips Bar

Bar as Criminals? Whether, being under Accuſations for the ſame Crimes, they are to ſit as Judges on each other's Trials for thoſe Crimes, or can Vote in their own Caſes, as we find by your Lordſhips Journal, ſince their being impeached, they have been admitted to do? Which Matters, and ſome others, being neceſſary to be adjuſted, the Commons cannot but inſiſt on a Committee of both Houſes to be appointed for that purpoſe: The departing from which, would be giving up the Rights of the Commons of England, known by unqueſtionable Precedents, and the Uſage of Parliament, and making all Impeachments, (the greateſt Bulwark of the Laws and Liberties of England) impracticable for the future.'

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The Lords hereupon entered into a Debate, whether they ſhould appoint a Committee, in purſuance of the Commons deſire; and having carried it in the Negative, yet deſired a preſent Conference with them, which was managed by the Duke of Devonſhire, who acquainted them:

Another Conference.

'That the Lords have deſired this Conference, upon Occaſion of the laſt Conference; in order to preſerve a good Correſpondence with the Houſe of Commons, which they ſhall always endeavour.

'As to the late Meſſages between the two Houſes, their Lordſhips are well aſſured, that on their Part nothing has paſſed, but what was agreeable to the Methods of Parliament, and proper to preſerve that good Underſtanding between both Houſes, which is neceſſary for the carrying on of the Public Buſineſs.

'As to the Propoſal of the Commons, that a Committee of both Houſes ſhould be appointed, to conſider of the Ways and Methods of Proceedings on Impeachments, their Lordſhips cannot agree to it.

Reaſons for not appointing a Committee.

'1. Becauſe they do not find that ever ſuch a Committee was appointed, on Occaſion of Impeachments for Miſdemeanors; and their Lordſhips think themſelves obliged to be extremely cautious in admitting any thing new in Matters relating to Judicature.

'2. That although a Committee of this nature was agreed to upon the Impeachments of the Earl of Danby, and the five Popiſh Lords for High Treaſon, yet it was upon Occaſion of ſeveral conſiderable Queſtions and Difficulties, which did then ariſe. And their Lordſhips do not find that the Succeſs in that Inſtance was ſuch, as ſhould encourage the purſuing the ſame Methods again, tho' in the like Caſe: The Lords obſerving, that after much time ſpent at that Committee, the Diſputes were ſo far from being there adjuſted, that they occaſioned an abrupt Concluſion of a Seſſion of Parliament.

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'3. Their Lordſhips are of Opinion, that the Methods of Proceedings on Impeachments for Miſdemeanors, are ſo well ſettled by the Uſage of Parliaments, that they do not foreſee any Difficulties likely to happen; at leaſt none have been yet ſtarted to them: And all the Preliminaries in the Caſe of Stephen Gaudett, and others (which was the laſt Inſtance of Impeachments for Miſdemeanours) were eaſily ſettled and agreed to, without any ſuch Committeee.

'4. The Lords cannot but obſerve, that this Propoſal of the Commons comes ſo very late, that their Lordſhips can expect no other Fruit of ſuch a Committee, but the preventing the Trials during this Seſſion.

'The Lords aſſure the Commons, that, in caſe any Difficulties ſhall ariſe in the Progreſs of theſe Trials, (which their Lordſhips do not foreſee) they will be ready to comply with the Commons in removing them, as far as Juſtice, and the Uſage of Parliament will admit.'

The Commons on the 11th, deſired a free Conference on the ſubject Matter of the laſt; and at the ſame time, drew up an Anſwer to their Lordſhips other Meſſage, on Monday, about their appointing Friday the 13th, for the Trial of the Lord Somers; which was to this Effect.

Free Conference.

'The Commons on Monday laſt (which was the 9th,) received a Meſſage from your Lordſhips, that your Lordſhips had appointed the Trial of John Lord Somers, upon Friday next, on their Impeachment againſt him; in which they obſerve, your Lordſhips have not nominated any Place for his Trial, though your Lordſhips thought fit to make that Matter, on the laſt Impeachment for a Miſdemeanour, the Subject of a long Debate.

'And they cannot but take notice, that your Lordſhips have taken as long a time, to give your Anſwer, to the Commons Deſire of a Committee of both Houſes, delivered at a Conference on Friday laſt, as you are pleaſed to allow the Commons to have, of the Day appointed by your Lordſhips for the ſaid Trial.

'Your Lordſhips appointing ſo ſhort a day, eſpecially whilſt the Propoſition made to your Lordſhips for a Committee of both Houſes was undetermined, the Commons take to be ſuch a Hardſhip to them, and ſuch an Indulgence to the Perſon accuſed, as is not to be parallel'd in any Parliamentary Proceedings.

'The Commons muſt likewiſe acquaint your Lordſhips, that their Experience of the Interruption of a former Trial on an Impeachment for Miſdemeanours, for want of ſettling the Preliminaries between the two Houſes, obliges them to inſiſt on a Committee of both Houſes, for preventing the like Interruption.

'And

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'And they conceive it would be very prepoſterous for them to enter upon the Trial of any of thoſe Lords, till your Lordſhips diſcover ſome Inclination to make the Proceedings thereupon practicable; and therefore, they think they have reaſon to inſiſt upon another Day to be appointed, for the Trial of the Lord Somers. And the Commons doubt not but to ſatisfy your Lordſhips at a free Conference, of the neceſſity of having a Committee of both Houſes, before they can proceed upon the ſaid Trial.'

Royal Aſſent given to ſeveral Bills.

On Thurſday June the 12th, His Majeſty came to the Houſe of Peers, and gave the Royal Aſſent to *an Act for the farther Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject: An Act for preventing the Inconveniences that may happen by Privilege of Parliament: An Act for appointing Wardens and Aſſay-Maſters, for Aſſaying wrought Plate in the Cities of York, Briſtol, Exeter, Cheſter and Norwich: An Act for Preſerving the Cotton-Library: An Act for Separating James Earl of Angleſey, from Katharine, Counteſs of Angleſey, his Wife, for the Cruelty of the ſaid Earl: An Act to diſſolve the Marriage of Ralph Bere with Elizabeth Eyre: An Act for a Court of Conſcience at Norwich: An Act for Diſſolving the Marriage of Sir John Dillon and Mary Boyle*; and many other Private Bills: After which he made the following Speech:

King's Speech.

'My Lords and Gentlemen,

'I Return you my hearty Thanks for the Care you have taken to eſtabliſh the Succeſſion to the Crown in the Proteſtant Line: And I muſt not loſe this Occaſion of acquainting you, that I am likewiſe extremely ſenſible of your repeated Aſſurances of ſupporting me in ſuch Alliances, as ſhall be moſt proper for the Preſervation of the Liberty of Europe, and for the Security of England and Holland. Your ready Compliance with my Deſires, as to the Succours for the States-General, is alſo a great Satisfaction to me, as well as a great Advantage to the common Cauſe. And as I have nothing ſo much at heart, as the Preſervation of the Liberty of Europe, and the Honour and Intereſt of England, ſo I make no doubt of attaining thoſe great Ends, by the Bleſſing of God, and the Continuance of your chearful Concurrence.

'My Lords and Gentlemen,

'The Seaſon of the Year makes it neceſſary to have a ſpeedy Receſs, and the Poſture of Affairs abroad does abſolutely require my Preſence, for the Encouragement of our Allies, and for the perfecting of ſuch Alliances as may be moſt effectual for the Common Intereſt: And therefore I muſt recommend a Diſpatch of the public

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'Buſineſs, eſpecially of thoſe Matters which are of the 'greateſt Importance.'

The Commons were willing to interpret this Speech, as an Approbation of their Proceedings in reſpect of their Conteſt with the Lords; and therefore agreed upon this Addreſs to his Majeſty:

Addreſs of the Commons.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, do, with all imaginable Chearfulneſs, return your Majeſty our moſt humble Thanks for your moſt gracious Speech from the Throne, in which your Majeſty is pleaſed to expreſs your royal Approbation of the Proceedings of your Commons. And we do further unanimouſly aſſure your Majeſty, that we will be ready on all Occaſions to aſſiſt your Majeſty, in ſupporting ſuch Alliances as your Majeſty ſhall think fit to make, in conjunction with the Emperor and the States-General, for the Preſervation of the Liberties of Europe, the Proſperity and Peace of England, and for reducing the exorbitant Power of France.'

When this Addreſs was preſented on Friday June the 13th, the King gave this Anſwer to mollify and to oblige in the wiſeſt Manner.

King's Anſwer.

'Gentlemen, I thank you heartily for the unanimous Aſ-
'ſurances you have given me of your Readineſs to aſſiſt me,
'in ſupporting ſuch Alliances as I ſhall make in conjuncti-
'on with the Emperor and the States-General. It will be
'a good Encouragement to them, to find the Senſe of this
'Kingdom ſo fully expreſſed on this Occaſion, and will
'likewiſe contribute moſt effectually, to the obtaining thoſe
'great Ends you have now mentioned, on which the Hap-
'pineſs of Europe does ſo much depend.'

But to return again to the Conteſts between the two Houſes: The Lords on the ſame day the King made this Speech, had ſent this Meſſage to the Commons by Dr. Newton and Mr. Gery.

Farther Conteſts between the two Houſes.

'In anſwer to the Meſſage from the Houſe of Commons of the tenth Inſtant, the Lords ſay, that although they take it to be unparliamentary in many Particulars, yet to ſhew their real Deſire of avoiding Diſputes, and removing all Pretence of delaying the Trials of the impeached Lords, they will only take notice of that Part of their Meſſage, wherein the Commons propoſe ſome things as Difficulties in reſpect of the Trials; which Matters relating wholly to their Judicature, and to their Rights and Privileges, as Peers, they think fit to acquaint the Commons with the following Reſolutions of the Houſe of Lords.

'1.

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'1. That no Lord of Parliament, impeached for high Crimes and Misdemeanours, and coming to his Trial, shall, upon this Trial, be without the Bar.

'2. That no Lord of Parliament, impeached for high Crimes and Misdemeanours, can be precluded from Voting on any Occasion, except in his own Trial.

'Their Lordships further take notice of a Mistake in Point of Fact, alledged in the Message of the Commons; it no way appearing upon their Journal, that the Lords impeached have voted in their own Case.

'The Lords being well assured, that all the Steps that have been taken by them in relation to these Impeachments, are warranted by the Practice of their Ancestors, and the Usage of Parliament, have reason to expect the Trials should proceed without Delay.'

Also that they are commanded by the Lords to acquaint this House, that,

'In answer to the Message of the House of Commons yesterday, the Lords say, that they cannot give a greater Evidence of their sincere and hearty Desires, of avoiding all Differences with the House of Commons, and of Proceeding on the Trials of the Impeachments, than by not taking notice of the several just Exceptions, to which that Message is liable, both as to the Matter and the Expressions.

'The Lords have nothing farther from their thoughts, than the going about to do any thing, which might have the least Appearance of Hardship with relation to the Commons.

'But the Answer of the Lord Somers to the Articles exhibited against him, having been sent down to the Commons on the 24th of May last, and they having, by their Message of the 21st of May, signified to their Lordships, their Intention of beginning with the Trial of his Impeachment in the first place:

'The Lords, considering how far the Session is advanced, thought it reasonable to appoint the 13th Instant for the said Trial, their Lordships finding several Precedents of appointing Trials on Impeachments within a shorter time.

'The Lords also think it incumbent upon them to dispatch the Trials of all the impeached Lords, before the rising of the Parliament. This is what Justice requires, and cannot be looked upon as a Matter of Indulgence: Nevertheless, that the Commons may see how desirous their Lordships are to comply with them in any thing which may be consistent with Justice, they have appointed the Trial of the Impeachment against John Lord Somers, on Tuesday the 17th of this Instant June, at ten of the Clock in the Forenoon, in the House of Lords, which will be then sitting in Westminster-Hall.

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'That they were commanded by the Lords to acquaint this Houſe, that the Lords do agree to a free Conference with the Commons, as deſired; and do appoint to-morrow at one o'Clock in the *Painted-Chamber*.'

The Commons, on the 13th, made this Anſwer to them.

Anſwer of the Commons.

'The Houſe of Commons find greater Reaſon to inſiſt upon their Propoſal of a Committee of both Houſes, from the two Meſſages received yeſterday from your Lordſhips; for their Ambiguity and Uncertainty do ſhow the Methods of former Parliaments to be the moſt proper Way for Diſpatch of Buſineſs.

'The Commons have been obliged to employ that time in conſidering how to anſwer your Lordſhips Meſſages, which otherwiſe would have been ſpent in preparing for the Lord Somers's Trial; ſo that the Delay muſt be charged where the Occaſion ariſeth. And the Commons, having deſired a Committee of both Houſes, to adjuſt the Preliminaries of the Trials, cannot but think it ſtrange your Lordſhips ſhould come into Reſolutions upon two of thoſe Points, while the Propoſal of the Houſe of Commons is under Debate, at Conferences between the two Houſes; the Commons having other Difficulties to propoſe, which concern them as Proſecutors, and all future Impeachments.

'And though the Commons have the Subject of your Lordſhips Reſolutions, with other things, to be debated at a Committee of both Houſes; yet they cannot but obſerve, that your Lordſhips ſecond Reſolution is no direct Anſwer to the Commons Propoſal; which was, whether Peers impeached of the ſame Crimes ſhall vote for each other upon their Trial for the ſame Crimes. And the Commons cannot believe, that any ſuch Rule can be laid down in plain Words, where there is a due Regard to Juſtice.

'And as to what your Lordſhips obſerve, that there is a Miſtake in Point of Fact alledged by the Commons; the Houſe may take notice of the Caution uſed by your Lordſhips, in wording that Part of your Meſſage; for they know your Lordſhips are too well acquainted with the Truth of the Fact to affirm that the impeached Lords did not vote in their own Caſes; and though the appearing or not appearing upon your Lordſhip's Journal does not make it more or leſs agreeable to the Rules of Juſtice, yet the Commons cannot but add this further Obſervation from your Lordſhips Journal, that the impeached Lords Preſence is not only recorded when thoſe Votes paſſed, but they alſo find ſome of them appointed of Committees, for preparing and drawing up the Meſſages and Anſwers to the Houſe of Commons; which they do not think has been the beſt Expedient for preſerving a good Correſpondence between the two Houſes, or adjuſting

what will be neceſſary upon theſe Trials: And therefore the Commons cannot think it agreeable to the Rules of Parliament for them to appear at the Trial, 'till all neceſſary Preliminaries are firſt ſettled with your Lordſhips.' Anno 13 W. III. 1701.

Then the Commons went to the Conference with the Lords, and Mr. Harcourt reported the Matter thereof, and the Words which the Lord Haverſham had ſpoke thereat; which he read in his Place, and afterwards delivered in the ſaid Report at the Clerks Table, where the ſame was read, and is as followeth, viz. Report of the Conference.

'That the Managers appointed by this Houſe met the Lords at the free Conference, the Subject Matter whereof was opened by Mr. Harcourt, and immediately afterwards further argued by Sir Bartholomew Shower.

'It was inſiſted on by each of them, that the Reaſons offered by their Lordſhips at the laſt Conference were not ſufficient for their Lordſhips diſagreeing to a Committee of both Houſes, deſired by the Commons at the firſt Conference.

'That, notwithſtanding thoſe Reaſons, the Commons ſtill thought a Committee of both Houſes abſolutely neceſſary, for adjuſting and preventing ſuch Differences as had happened, or might ariſe previous to, or upon the Trials; and therefore inſiſted, that ſuch a Committee ſhould be appointed before the Commons could proceed on any Trial.

'Twas urged as one Reaſon for ſuch a Committee, that many Difficulties might happen, whereby the Trials might be obſtructed, if the Preliminaries ſhould not be firſt adjuſted: As one Inſtance, that Point of ſeveral Lords being under Impeachments of the ſame Crimes, voting on each other's Trial, was mentioned.

'The * Lord Steward firſt replied, and nothing was offered by his Grace, but what was material and pertinent to the Matter in queſtion, and agreeable to the Method of Parliament in free Conferences, That John Lord Haverſham ſpoke immediately after; and in his Lordſhip's Diſcourſe, uſed theſe or the like Expreſſions.'

'One thing there is, though I cannot ſpeak it, becauſe I am bound up by the Orders of the Houſe, yet I muſt have ſome Anſwer; this is, as to the Lords voting in their own Caſe; it requires an Anſwer, though I cannot go into the Debate of it. The Commons themſelves have made this Precedent; for, in theſe Impeachments, they have allowed Men guilty of the ſame Crimes to vote in their own Houſe; and therefore we have not made any Diſtinction in our Houſe, that ſome ſhould vote and ſome not. The Lords have ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hope Juſtice ſhall never be made uſe of as a Mask for any Deſign. And therefore give me leave to ſay (though I am not Speech of the Lord Haverſham

* *Duke of Devonſhire.*

to

Anno 13 W. III. 1701.

to argue it) 'tis a plain Demonſtration that the Commons think theſe Lords innocent; and I think the Propoſition is undeniable; for there are ſeveral Lords in the ſame Crimes, in the ſame Facts, there is no Diſtinction. And the Commons leave ſome of theſe Men at the Head of Affairs, near the King's Perſon, to do any Miſchief if they were inclined to it; and impeach others, when they are both alike guilty, and concerned in the ſame Facts. This is a Thing I was in hopes I ſhould never have heard aſſerted, when the Beginning of it was from the Houſe of Commons.

'Theſe Expreſſions were inſtantly objected to by Sir Chriſtopher Muſgrave; and the Managers took them to be ſo great an Aſperſion on the Honour of this Houſe, that they thought themſelves obliged in Duty immediately to withdraw from the Free Conference.'

'As the Managers were withdrawing, his Grace my Lord Steward ſpoke to the Effect following; That he hoped they would not think that that Lord had any Authority from the Houſe of Lords to uſe any ſuch Expreſſion towards the Commons.'

Votes thereon.

Reſolved, That John Lord Haverſham hath, at the free Conference this Day, uttered moſt ſcandalous Reproaches, and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, and tending to the making a Breach in the good Correſpondence between the Lords and Commons, and to the interrupting the public Juſtice of the Nation, by delaying the Proceedings on Impeachments.

Reſolved, That John Lord Haverſham be charged before the Lords, for the Words ſpoken by the ſaid Lord this Day at the free Conference: And that the Lords be deſired to proceed in Juſtice againſt the ſaid Lord Haverſham, and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Houſe of Commons does deſerve.

Ordered, That Sir Chriſtopher Muſgrave do carry the ſaid Charge and Reſolutions to the Lords.

A Meſſage from the Lords.

A Meſſage from the Lords by Doctor Newton and Mr. Gery:

'Mr. Speaker, The Lords having been informed by their Managers, that ſome Interruption happened at the free Conference, which their Lordſhips are concerned at; becauſe they wiſh that nothing ſhould interrupt the public Buſineſs, do deſire the Commons would come again preſently to the ſaid free Conference; which they do not doubt will prove the beſt Expedient to prevent the Inconvenience of a Miſunderſtanding upon what has paſt.'

Another.

Next Day, which was Saturday the 14th, came another Meſſage from the Lords, importing,

'That upon Occaſion of their laſt Meſſage yeſterday, in order

order to continue a good Correſpondence between the two Houſes, their Lordſhips did immediately appoint a Committee to ſtate the Matter of the Free-Conference, and alſo to inſpect Precedents of what has happened of the like Nature; and that the public Buſineſs may receive no Interruption, the Time deſired by their Lordſhips for renewing the Free Conference being elapſed, their Lordſhips deſire a preſent Free Conference in the Painted-Chamber, upon the Subject-Matter of the laſt Free-Conference.' Anno 13 W. III. 1701.

Upon which the Commons came to the following Reſolution: Votes thereon.

'That an Anſwer be returned to the Lords, that the Commons are extremely deſirous to preſerve a good Correſpondence between the two Houſes, and expedite the Trials of the impeached Lords; but do conceive 'tis not conſiſtent with the Honour of the Commons to renew the Free Conference, until they have received Reparation, by their Lordſhip's doing juſtice upon John Lord Haverſham, for the Indignity he yeſterday offered to the Houſe of Commons.'

On the ſame Day, Saturday the 14th of June, Mr. Bruges reported, that he had carried the Articles of Impeachment againſt Charles Lord Hallifax to the Lords; which were, Articles againſt the Lord Hallifax and his Replies.

'1ſt, That, whereas it was the continued Senſe of the Commons of England, that it was highly reaſonable that the forfeited Eſtates of Rebels and Traitors in Ireland ſhould be applied in Eaſe of his Majeſty's faithful Subjects of the Kingdom of England, the ſaid Lord Hallifax preſumed to adviſe, paſs, or direct the paſſing a Grant to Thomas Railton Eſq; in truſt for himſelf, of ſeveral Debts, Intereſts, &c. amounting to 13000 l. or thereabouts, accruing to his Majeſty from Attainders, Outlawries, or other Forfeitures in Ireland.'—— To which he anſwered, 'That he did accept the ſaid Grant, as it was lawful for him to do, without Breach of his Duty, and the Truſt repoſed in him; which Grant hath ſince been taken away by Act of Parliament, and he hath not made clear thereof, as yet, above 400 l.'

'2dly, That he has not repaid into the Receipt of his Majeſty's Exchequer in Ireland the Sum of 1000 l. which he had actually received to his own Uſe, out of the Profits of the forementioned Grant, which he ought to have ſo repaid, by virtue of the *Act of granting an Aid to his Majeſty by Sale of the Forfeited Eſtates in Ireland.*'——To which he anſwered, 'That he gave direction, after the ſaid Act paſſed, to his Agents in Ireland, to do, in relation to the Money received, as ſhould be adviſed by Council there; by whom his Agents were adviſed, that the ſaid Monies being received out of the mean Profits, which were remitted by that Act, were not within the firſt mentioned Clauſe in the ſaid Act.

3dly,

Anno 13 W. III. 1701.

'3dly, That in the time of a tedious and expensive War, he did advise, procure and assent, not only to the passing divers Grants to others, but did obtain and accept of several beneficial ones for himself; which Practices were a most notorious Abuse of his Majesty's Goodness, &c.'—To which he answered, 'That he served his Majesty faithfully in his Stations, and his Majesty graciously accepted of his Service; and as a Mark of his royal Favour, did make, for his Benefit, such Grants as are mentioned in the precedent and subsequent Articles, and none other. And as to other Persons, he only, in conjunction with the other Commissioners, did sign several Warrants and Dockets for such Grants, as his Majesty was pleased to direct.'

'4thly, Whereas by common Law, and other Statutes, the King's Forests should be preserved, the said Lord Hallifax, not regarding the Laws and Ordinances of this Realm, nor his Duty to his Majesty and the Public, has procured a Grant to Henry Segar, Gent. in trust for himself, of the Sum of 14,000 l. of Scrubbed-Beech, Birch, Holly &c. under Colour whereof, Sapling-Oaks, and many Tuns of well-grown Timber had been cut and fallen, and disposed of for his Benefit.'——To which he answered, 'That his Majesty, out of his Grace and Favour, did grant in trust for him the Sum of 2000 l. *Ann.* to be raised by the Fall of Scrubbed-Beech, Birch, &c. for the Space of seven Years, which Grant was not prejudicial to any Timber growing in the said Forest. And if any Abuse were in cutting the Wood, he conceives he is not answerable for the same, it being done by the Direction of his Majesty's Surveyor-General, and other his Majesty's Officers.'

'5thly, That he, the said Lord Hallifax did grant, or procured to be granted, to his Brother Christopher Montague Esq; the Place and Office of Auditor of the Receipts, and Writer of the Tallies, in trust for himself; so that he, the said Lord was, in Effect, at the same time, one of the Commissioners of the Treasury, Chancellor of the Exchequer and Auditor of the Receipts and Writer of the Tallies; and enjoyed the Profits of the said several Offices, which were manifestly inconsistent, and ought to have been a Check to each other.' To which he answered, 'That the Grant of the said Office was done at his Desire and Request, because he intended, in a short time after, to leave his own Employment and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself, which has been since done, and he conceives was lawful for him to do.'

'6thly, That the said Lord Hallifax, well knowing the most apparent evil Consequences, as well as the Injustice of the Partition of the Spanish Monarchy, did yet advise his Majesty to enter into a Treaty for it, and did encourage and pro-

promote the ſame.' To which he anſwered, 'That he never did adviſe his Majeſty to enter into or make the ſaid Treaty, or was ever conſulted upon any Clauſe or Article thereof: But when the ſaid Matter was diſcourſed at Tunbridge-Wells, he made ſeveral Objections to the ſame.' Anno 13 W. III. 1701.

On Monday, June the 16th, the Lords ſent a Meſſage to acquaint the Houſe of Commons, 'That the Lords, taking into their Care the ordering of the Trial of John Lord Somers, on Tueſday the 17th of June Inſtant, at ten of the Clock in Weſtminſter-Hall, have prepared ſome Notes and Rules to be obſerved at the ſaid Trial, which the Lords have thought fit to communicate to this Houſe, viz. Rules for Trial of the impeached Lords.

'That the whole Impeachment is to be read, and then the Anſwer; which being done, the Lord-Keeper is to tell the Commons, that now they may go on with their Evidence.

'Then the Lord-Keeper is to declare, That now the Court is proceeding to hear the Evidence, and deſire the Peers to give attention.

'If any of the Peers, or the Members of the Houſe of Commons, that manage the Evidence, or the Lords impeached, do deſire to have any Queſtion asked, they muſt deſire the Lord-Keeper to ask the ſame.

'If any Doubt doth ariſe at the Trial, no Debate is to be in the Court, but the Queſtion ſuſpended to be debated in this Houſe.

'The Members of the Houſe of Commons to be there before the Peers come.

'None to be covered at the Trial but the Peers.

'That ſuch Peers at the Trial of the impeached Lords, who at the Inſtance of the ſaid Lord, or of the Commons, ſhall be admitted Witneſſes, are to be ſworn at the Clerk's Table, and the Lord-Keeper to adminiſter the Oath, and are to deliver their Evidence in their own Places.

'Thoſe Witneſſes that are Commoners are to be ſworn at the Bar by the Clerk, and are to deliver Evidence there.

'The impeached Lords may croſs-examine Witneſſes, *viva voce*.'

'But the Commons appointed a Committee to conſider of the Reaſons why they cannot proceed to the Trial of the Lord Somers. Which Reaſons were the next day reported by Mr Harcourt, and were as follow: Reaſons of the Commons againſt proceeding to the Trial of the Lord Somers.

'The Commons, in this whole Proceeding againſt the impeached Lords, have acted with all imaginable Zeal to bring them to a ſpeedy Trial; and they doubt not but it will appear, by comparing their Proceedings with all others upon the like Occaſion, that the Houſe of Commons have nothing to blame themſelves for, but that they have not expreſſed the Reſentment their Anceſtors have juſtly ſhewed,

Anno 1 W. III. 1701. upon much leſs Attempts which have been made upon their Power of Impeachments.

'The Commons, on the 31ſt of May, acquainted your Lordſhips, that they thought it proper, from the Nature of the Evidence, to proceed in the firſt place upon the Trial of the Lord Somers. Upon the firſt intimation from your Lordſhips, ſome days afterwards, that you would proceed to the Trial of the impeached Lords, whom the Commons ſhould be firſt ready to begin with, notwithſtanding your Lordſhips had before thought fit to appoint which Impeachment ſhould be firſt tried, and affix a Day for ſuch Trial, without conſulting the Commons who are the Proſecutors:

'The Commons determine to expedite the Trials to the utmoſt of their power, in hopes of attaining that end: And for the more ſpeedy and eaſy adjuſting and preventing any differences, which had happened, or might ariſe previous to, or upon theſe Trials, propoſed to your Lordſhips at a Conference, as the moſt parliamentary and effectual Method for that purpoſe, and that which in no manner intrenched upon your Lordſhips Judicature, that a Committee of both Houſes ſhould be nominated, to conſider of the moſt proper Ways and Methods of proceeding upon Impeachments, according to the Uſage of Parliament.

'In the next Meſſage to the Commons, upon Monday the 9th of June, your Lordſhips thought fit, without taking the leaſt notice of this Propoſition, to appoint the Friday then following for the Trial of the ſaid Lord Somers; whereunto, as well as to many other Meſſages and Proceedings of your Lordſhips upon this Occaſion, the Houſe of Commons might have juſtly taken very great exceptions; yet, as an Evidence of their moderation, and to ſhew their readineſs to bring the impeached Lords to ſpeedy Juſtice, the Commons inſiſted only on their Propoſition for a Committee of both Houſes, to ſettle and adjuſt the neceſſary Preliminaries to the Trial; particularly, whether the impeached Lords ſhould appear on their Trial at your Lordſhips Bar as Criminals? whether, being under Accuſations of the ſame Crimes, they ſhould ſit as Judges on each other's Trial for thoſe Crimes, or ſhould vote in their own Caſes, as 'tis notorious they have been permitted by your Lordſhips to do, in many Inſtances which might be given; to which particulars, your Lordſhips have not yet given a direct Anſwer, though put in mind thereof by the Commons.

'Your Lordſhips at a Conference, having offered ſome Reaſons why you could not agree to a Committee of both Houſes, to adjuſt the neceſſary Preliminaries, the Commons thereupon deſired a free Conference, and your Lordſhips agreed thereunto; at which, 'tis well known to many of your Lordſhips,

Lordſhips, who were then preſent, what moſt ſcandalous Reproaches, and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, were uttered by John Lord Haverſham, whereby the Commons were under a neceſſity of withdrawing from the ſaid free Conference; for which Offence, the Commons have, with all due Regard to your Lordſhips, prayed your Lordſhips Juſtice againſt the Lord Haverſham; but have as yet received no manner of Satisfaction. Anno 13 W. III. 1701.

'The Commons reſtrain themſelves from enumerating your Lordſhips very many irregular and unparliamentary Proceedings upon this Occaſion; but think it is what they owe to public Juſtice, and all the Commons of England whom they repreſent, to declare ſome few of thoſe Reaſons, why they peremptorily refuſe to proceed to the Trial of the Lord Somers on the 17th of June.

'1ſt, Becauſe your Lordſhips have not yet agreed that a Committee of both Houſes ſhould be appointed, for ſettling the neceſſary Preliminaries; a Method never until this time denied by the Houſe of Lords, whenſoever the Commons have thought it neceſſary to deſire the ſame.

'2dly, Should the Commons (which they never will do) be contented to give up thoſe Rights, which have been tranſmitted to them from their Anceſtors, and are of abſolute neceſſity to their Proceedings on Impeachments; yet, whilſt they have any Regard to public Juſtice, they never can appear as Proſecutors before your Lordſhips, till your Lordſhips have firſt given them Satisfaction, that the Lords impeached of the ſaid Crimes, ſhall not ſit as Judges on each other's Trial for thoſe Crimes.

'3dly, Becauſe the Commons have as yet received no Reparation, for the great Indignity offered to them at the free Conference by the Lord Haverſham: The Commons are far from any Inclination, and cannot be ſuppoſed to be under any neceſſity of delaying the Trial of the Lord Somers: There is not any Article exhibited by them, in maintenance of their Impeachment againſt the Lord Somers, for the Proof whereof they have not full and undeniable Evidence; which they will be ready to produce, as ſoon as your Lordſhips ſhall have done Juſtice upon the Lord Haverſham; and the neceſſary Preliminaries in order to the ſaid Trial, ſhall be ſettled by a Committee of both Houſes.

'The Commons think it unneceſſary to obſerve to your Lordſhips, that moſt of the Articles whereof the Lord Somers ſtands impeached, will appear to your Lordſhips to be undoubtedly true, from Matters of Record, as well as by the Confeſſion of the ſaid Lord Somers, in his Anſwer to the ſaid Articles; to which the Commons doubt not but your

Anno 13 W. III. 1701.

Lordſhips will have a due regard, when his Trial ſhall regularly proceed.'

The Lords ſent their Anſwer to this Meſſage, on Friday, June the 20th in theſe Words:

Anſwer of the Lords.

'The Lords, in anſwer to the Meſſage of the Commons of the 17th inſtant, ſay, the only true way of determining, which of the two Houſes has acted with the greateſt Sincerity, in order to bring the impeached Lords to their Trials, is to look back upon their reſpective Proceedings.

'The Lords do not well underſtand what the Commons mean by that Reſentment which they ſpeak of in their Meſſage: Their Lordſhips own the Houſe of Commons have a Right of Impeaching: And the Lords have undoubted Power of doing Juſtice upon thoſe Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reaſonable time. This Power is derived to them from their Anceſtors, which they will not ſuffer to be wreſted from them by any Pretences whatſoever.

'Their Lordſhips cannot but wonder, that the Commons ſhould not have propoſed a Committee of both Houſes much ſooner, if they thought it ſo neceſſary for the bringing on the Trials; no mention being of ſuch a Committee, from the firſt of April to the ſixth of June, although, during that interval, their Delays were frequently complained of by the Houſe of Lords.

'The manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houſes yielded to by the Lords, in caſe of any Impeachment for high Crimes and Miſdemeanours; ſo their Lordſhips do inſiſt, that they will make no new Precedent upon this Occaſion. Many Impeachments for Miſdemeanours have in all times been determined without ſuch a Committee: And if now the Commons think fit, by any unprecedented Demand, to form an excuſe for not proſecuting their Impeachments, it is demonſtrable where the Obſtruction lies.

'As to the Preliminaries which the Commons mention in particular, as proper to be ſettled at ſuch a Committee, they have received the Reſolutions of the Houſe of Lords therein, by their Meſſage of the 12th inſtant, from which (being matters entirely relating to their Judicature) their Lordſhips cannot depart.

'As to the laſt Pretence the Commons would make to ſhelter the delaying the Trials, from ſome Expreſſions which fell from the Lord Haverſham at the free Conference, at which Offence was taken, their Lordſhips will only obſerve,

'Firſt, That they have omitted nothing which might give the Commons all reaſonable Satisfaction of their purpoſe to do

do them Juſtice in that matter, ſo far as is conſiſtent with doing Juſtice to that Lord; and alſo to preſerve all good Correſpondence with them; as appears by the ſeveral ſteps they have taken.

'Secondly, That this Buſineſs has no relation to the Trial of the impeached Lords; and therefore their Lordſhips cannot imagine, why the Commons ſhould make Satisfaction and Reparation againſt the Lord Haverſham, a neceſſary Condition for the going on with the Trials, and at the ſame time, find no Difficulties in proceeding on other Buſineſs.'

In the mean time, on Tueſday June the 17th, the Lords proceeded to the Trial of John Lord Somers, in Weſtminſter-Hall; where this Proclamation firſt was made: 'Whereas a Charge of high Crimes and Miſdemeanours has been exhibited by the Houſe of Commons, in the Name of themſelves and all the Commons of England, againſt John Lord Somers; all Perſons concerned are to take notice that he now ſtands upon his Trial, and they may now come forth, in order to make good the ſaid Charge.' Then the Houſe adjourned to the ſaid Hall; and being ſeated, after Proclamation for ſilence, the Articles againſt John Lord Somers were read, and alſo his Lordſhip's Anſwer to them. Then the Lord Keeper declared the Houſe was ready to hear the Evidence againſt him. The Lord Somers moved to have his Council heard. After long Debate, and hearing the Judges to ſeveral Queſtions asked them by the Lords, this Queſtion was propoſed; That John Lord Somers be acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all things therein contained, and that the ſaid Impeachment be diſmiſſed. When the Lord-Keeper had asked every Lord, whether content or not? he declared the Majority was for acquitting. Then the Lords adjourned to the Houſe above, and made the following Order:

His Lordſhip honourably acquitted.

'It was conſidered, ordered, and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, that John Lord Somers ſhall be, and is hereby acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all things therein contained, and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed.'

Remonſtrance of the Commons.

The Commons, to juſtify their refuſal of appearing at the ſaid Trial, did reſolve, on June the 20th, 'That the Lords have refuſed Juſtice to the Commons upon the Impeachment againſt the Lord Somers, by denying them a Committee of both Houſes, which was deſired by the Commons as the proper and only Method of ſettling the neceſſary Preliminaries, in order to the proceeding to the Trial of the ſaid Lord Somers with effect; and afterwards by proceeding to a pretended Trial of the ſaid Lord, which could tend only to protect him from Juſtice, by colour of an illegal Acquittal.

Againſt

Anno 13 W. III. 1701.

Againſt which Proceedings of the Lords, the Commons do ſolemnly proteſt, as being repugnant to the Rules of Juſtice, and therefore null and void. That the Houſe of Lords, by the pretended Trial of John Lord Somers, have endeavoured to overturn the Right of Impeachments, lodged in the Houſe of Commons by the ancient Conſtitution of this Kingdom, for the Safety and Protection of the Commons againſt the Power of great Men; and have made an Invaſion upon the Liberties of the Subject, by laying a Foundation of Impunity for the greateſt Offenders. That all the ill Conſequences, which may at this time attend the Delay of the Supplies given by the Commons, for preſerving the public Peace, and maintaining the Balance of Europe, by ſupporting our Allies againſt the Power of France, are to be imputed to thoſe, who, to procure an Indemnity for their own enormous Crimes, have uſed their utmoſt endeavours to make a Breach between the two Houſes.'

Anſwer of the Lords.

The Lords the ſame day ſent this Anſwer to that Meſſage:

'The Lords do acquaint the Commons, that they might have known by the Records of the Houſe of Lords, that the Lords had proceeded to the Trial of the Lord Somers on Tueſday laſt, being the Day appointed; and the Commons not appearing to maintain their Articles againſt the ſaid Lord, the Lords had by judgment of their Houſe acquitted him of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all things therein contained, and had diſmiſſed the ſaid Impeachment.

'And the Lords had appointed Monday next for the Trial of the Earl of Orford, on which Day they would proceed on the ſaid Trial.

'The Commons ſtill preſſing for a Committee of both Houſes, which their Lordſhips could never conſent to for the Reaſons already given, their Lordſhips could infer nothing from their perſiſting in this Demand, but that they never deſigned to bring any of their Impeachments to a Trial.

'As to the Lord Haverſham, his Anſwer was now before the Houſe of Commons, and the Lords reſolved to do juſtice in that matter.'

The ſame day, the Commons had a Copy given them of the Lord Haverſham's Anſwer to the Charge againſt him; which being extraordinary, deſerves to be inſerted in this place.

Anſwer of the Lord Haverſham to a Complaint of the Commons.

'The ſaid Lord Haverſham, ſaving to himſelf all Advantages of Exception to the ſaid Charge, and of not being prejudiced by any want of Form in this Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him as one of the Peers of this Realm; for Anſwer to the ſaid Charge,

Charge, ſaith, That on the ſixth Day of June 1701, the Commons by a Meſſage ſent to the Lords, deſired a Conference upon their Meſſage to the Commons of the fourth of June: In which Conference they propoſed to the Lords, That a Committee of both Houſes might be nominated, to conſider of the moſt proper Ways and Methods of Proceeding in the Impeachments of the Lords according to the Uſage of Parliaments. That on the 10th of June, The Lords deſired another Conference with the Commons, in which they delivered them their Reaſons why they could not agree to the appointing of ſuch a Committee; *(viz.)* Firſt, That they could not find, that ever ſuch a Committee was appointed on Occaſion of Impeachments for Miſdemeanours, and their Obligation to be curious in admitting any thing new relating to Judicature. Secondly, That although a Committee of this nature was agreed to, upon the Impeachments of the Earl of Danby, and the five Popiſh Lords for High-Treaſon; yet the Succeſs in that Inſtance, was not ſuch as ſhould encourage the purſuing of the ſame Method, though in the like Caſe; and that, after ſo much time ſpent in the Committee, the Diſputes were ſo far from being there adjuſted, that they occaſioned the abrupt Concluſion of a Seſſion of Parliament. Thirdly, That the Methods of Proceedings for Miſdemeanours are ſo well ſettled by the Uſage of Parliament, that no Difficulties were likely to happen, nor none had been ſtated to them; and that all the Preliminaries in the Caſe of Stephen Gaudett, and others, (which was the laſt Inſtance of Impeachments for Miſdemeanours) were eaſily ſettled and agreed to, without any ſuch Committee. Fourthly, That the Propoſal of the Commons came ſo very late, that no other Fruit could be expected of ſuch a Committee, but the preventing of the Trials during the Seſſion. Whereupon the Commons, on the 12th of June, deſired of the Lords a Free Conference, on the Subject Matter of the laſt Conference. That the Lords, on the 12th of June, came to two Reſolutions in relation to the Lords impeached: 'Firſt, That no Lord of Parliament, impeached for high Crimes and Miſdemeanours, and coming to his Trial, ſhall upon his Trial, be without the Bar. Secondly, That no Lord of Parliament, impeached for high Crimes and Miſdemeanours, can be precluded from Voting on any Occaſion, except in his own Trial.' And by Meſſengers of their own, the Lords acquainted the Commons with the ſaid two Reſolutions; and alſo that they agreed to a Free Conference with the Commons, and appointed the next day. That upon the 30th of June, Mr. Harcourt, one of the Managers, began the Free Conference on the part of the Commons, and argued upon the four Reaſons given by the Lords, why they could not agree

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'Gentlemen, I ſhall begin what I have to ſay, as that worthy Member who opened this Conference, that there is nothing the Lords more deſire than to keep a good Correſpondence, which is ſo neceſſary to the Safety of the Nation, and the Diſpatch of public Buſineſs; and nothing they have more carefully avoided, than what might create a Miſunderſtanding between the two Houſes. A greater Inſtance of which could not be given, than the Meſſages my Lords returned to ſome the Commons had ſent them up; in which they took care to expreſs themſelves ſo cautiouſly, that no Heat might ariſe from any Expreſſion of theirs. And as to what the worthy Members mentioned, in relation to delay; the repeated Remembrances ſent the Commons, with relation to the ſending up the Articles againſt the impeached Lords, are a ſufficient Inſtance how deſirous they are that theſe Matters ſhould proceed. And the Lords have this Satisfaction, that it is not on their part that the Trials are not in a greater Forwardneſs; they cannot but look on it as a great Hardſhip, that they ſhould lie under long Delays on Impeach-

Impeachments. Perſons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witneſſes may die; and many other like Accidents may happen. The Inſtance the worthy Members give of the Popiſh Lords, as it is a Crime of another Nature, and not fully to the point, ſo it ſeems to make againſt what it was brought for: For the worthy Members ſay, there was but one of the Lords brought to juſtice, though four more (as I take it) were accuſed. And can any Man believe, that the Commons have a mind to bring only one of theſe Lords to Trial? It is inconſiſtent with the Opinion that every body muſt have of their Juſtice. And as to the point of Judicature, it were very hard upon the Lords, that no Perſon ſhould be brought to Trial, till the Judicature of the Houſe be ſo firſt. The Judicature of the Lords is their Peculiar, and hath in former Ages been ſacred with the Commons themſelves. And this Houſe, perhaps, hath as much reaſon to be jealous, and careful of it, as any other Houſe ever had; eſpecially when one ſingle Precedent is ſo urged and inſiſted upon. One thing there is which a worthy Member mentioned, tho' I cannot ſpeak to it at large, becauſe I think myſelf bound up by the Reſolutions of the Houſe; yet it muſt have ſome Anſwer; that is, as to the Lords Voting in their own Caſe; it requires an Anſwer, though I cannot enter into the Debate of it. The Commons themſelves have made this Precedent; for in theſe Impeachments they have allowed Men, equally concerned in the ſame Facts, to vote in their own Houſe; and we have not made the Diſtinction in ours, that ſome ſhould vote and ſome not. The Lords have ſo high an Opinion of the Houſe of Commons, that they believe Juſtice ſhall never be made uſe of as a Mask for any Deſign. And therefore give me leave to ſay, though I am not to argue it, 'tis to me a plain Demonſtration, that the Commons think thoſe Lords innocent; and I think the Propoſition is undeniable: For when there are ſeveral Lords in the ſame Circumſtances, in the ſame Facts, there is no Diſtinction; and the Commons leave ſome of theſe Men at the Head of Affairs, near the King's Perſon, to do any Miſchief if they were inclined to it; it looks as if they thought them all innocent. This was a thing I was in hopes I ſhould never have heard aſſerted, when the Beginning of it was from the Houſe of Commons.

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'The ſaid Lord being here interrupted, he deſired to be heard out, and that his Words might be taken down in writing. But the Managers for the Commons broke up, and departed, refuſing to hear any Explanation. Now the ſaid Lord, as to any implicit Charge of a Deſign to reflect on, or diſhonour the Houſe of Commons, denies any ſuch

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Deſign or Intention; having, for many Years, had the Honour to ſit in the Houſe of Commons, and having ever had an honourable and reſpectful Senſe thereof: But the ſaid Lord was led to expreſs himſelf in the Manner aforeſaid, for the Reaſons aforeſaid, and takes himſelf to be juſtify'd therein, by the Facts and Reaſons following:

'That the nature of that Conference was, that it ſhould be free; the Occaſion of it, becauſe either Houſe apprehended the other to be in an Error; and the End of it, that each ſide might urge ſuch Facts as are true, and ſuch Reaſons as are forcible to convince. That one Article of the Impeachment againſt John Lord Somers, was, That the Treaty of Partition 1699, was ratify'd under the Great-Seal, which then was in the Cuſtody of the ſame Lord, then Lord-Chancellor of England; That the Commons on the firſt of April 1701, *Reſolved*, That the Earl of Portland by negotiating and concluding the Treaty of Partition, was guilty of a high Crime and Miſdemeanour; and purſuant thereto, lodged an Impeachment againſt him in the Houſe of Peers; which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of 1699, the Treaty of 1698, not being before the Houſe of Commons, till after the time of that Vote and Impeachment: and yet the Earl of Jerſey, who then was Secretary of State and a Privy-Counſellor, and actually ſigned the ſaid Treaty of 1699, as a Plenipotentiary with the Lord Portland, ſtands unimpeached, and continues at the Head of Affairs, being Lord-Chamberlain, near his Majeſty's Perſon, and his Preſence and Councils, (without complaint:) That the Earl of Orford, and the Lords Somers and Hallifax, are ſeverally impeached for adviſing the Treaty of Partition of 1698, and yet Mr. Secretary Vernon, who then was Secretary of State, and a Privy-Counſellor, and acted in the promoting of the Treaty of Partition of 1698, ſtands unimpeached, and ſtill continues one of the principal Secretaries of State; and Sir Joſeph Williamſon, who then was a Privy-Counſellor, and tranſacted and ſigned the Treaty of Partition of 1698, as a Plenipotentiary, ſtands unimpeached. That the Lord Hallifax is impeached, for that he, being a Commiſſioner of the Treaſury, aſſented to the paſſing of divers Grants from the Crown to ſeveral Perſons, of Lands in Ireland; and yet Sir Edward Seymour, Sir Stephen Fox, and Mr. Pelham, who being ſeverally Lords Commiſſioners of the Treaſury, did ſeverally aſſent to the paſſing of divers like Grants from his Majeſty, of Lands in Ireland, ſtand unimpeached. That in the Impeachments againſt the Earl of Orford and Lord Somers, one of the Articles againſt them is for procuring a Commiſſion to Captain Kidd, and likewiſe a Grant under the Great-Seal, of the Ships and Goods of certain Perſons

therein

therein named, to certain Perſons in truſt for them; and yet other Lords, equally concerned in procuring the ſaid Commiſſion and Grant, ſtand unimpeached. That the ſaid Mr. Secretary Vernon, Sir Edward Seymour, Sir Stephen Fox, and Mr. Pelham, notwithſtanding their being Parties in the ſame Facts, charged in the ſaid reſpective Impeachments, have been permitted to ſit and vote in the Houſe of Commons, touching the Impeachments and the Matters thereof: That theſe Facts being true and publicly known, the Conſequences reſulting therefrom (as the ſaid Lord Haverſham apprehended) are undeniable, *viz.* That the doing of the ſame thing, by two Perſons in equal Circumſtances, cannot be a Crime in one, and not in another. That the Commons had no reaſon to inſiſt, that the Lords ſhould not permit that in their Members, which the Commons had firſt permitted, and continued to permit, and ſo begun the firſt Precedent, in their own Members. That it muſt be thought, that the impeached Lords (notwithſtanding the Facts alledged in the Impeachment) are innocent of Danger to the King, when the Lord Jerſey and Mr Secretary Vernon, who were reſpectively concerned in the Partition-Treaties, are permitted without Complaint, to be at the Head of Affairs, and in the King's Preſence, and of his Councils, as not dangerous: That the Word *innocent*, uſed in the Words ſpoken by the ſaid Lord Haverſham, can extend no further than to ſuch Matters as were done by the impeached Lords, of the ſame nature, with what was done by thoſe unimpeached. All which Facts being true, and the Conſequences obvious, the ſaid Lord being ready to prove the ſame, he inſiſts that the Words ſpoken by him at the ſaid Free Conference, were not ſcandalous or reproachful, nor falſe, nor reflecting on the Honour or Juſtice of the Houſe of Commons; but were ſpoken upon a juſt Occaſion, given in Anſwer to ſeveral Expreſſions that fell from the Managers for the Commons, remote, as he conceives, from the Matter in queſtion, and reflecting on the Honour and Juſtice of the Houſe of Peers; and in Maintenance and Defence of the Lords Reſolution and Judicature, and conformable to the Duty he owes to the ſaid Houſe. And the ſaid Lord humbly demands the Judgment of this honourable Houſe therein. And the ſaid Lord Haverſham denies that he ſpoke the Words ſpecified in the ſaid Charge, in ſuch Manner and Form, as the ſame are therein ſet down. And having thus given a true Account of this Matter, and it being true and indiſputable, that ſome Lords in this Houſe, equally concerned in Facts, for which other Lords are impeached by the Houſe of Commons, are ſtill near the King's Perſon, in the greateſt Places of Truſt and Honour, and unimpeached; and alſo, that ſeveral Members of the Houſe

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of Commons equally concerned in the ſame Facts, for which ſome of the Lords are impeached, do however remain unimpeached; the ſaid Lord thinks, ſuch a Truth could never have been more properly ſpoken, in the Maintenance and Defence of your Lordſhips Judicature, and Reſolutions; and inſiſteth, that what he ſaid at the Free Conference, was not any ſcandalous Reproach, or falſe Expreſſion, or any ways tending to make a Breach in the good Correſpondence between the Lords and Commons, or to the Interrupting the Public Juſtice of the Nation, by Delaying the Proceedings on the Impeachments, as in the ſaid Charge alledged; but agreeable to Truth, in Diſcharge of his Duty, and in the Defence of the undoubted Right and Judicature of this Houſe.

HAVERSHAM.

Farther Conteſts betwixt the two Houſes.

The Commons on Friday the 20th, after the ſending and receiving the fore-mentioned Meſſages, *Ordered*, That no Member ſhould preſume to appear on Monday next, at the pretended Trial of the Earl of Orford, upon pain of incurring the utmoſt Diſpleaſure of the Houſe; and then adjourned to Tueſday Morning. But the Lords continued ſitting, and on the 21ſt, Reſolved, 'That unleſs the Commons Charge againſt the Lord Haverſham, were preſented by them with Effect before the End of that Seſſion, the Lords would declare and adjudge him wholly innocent of the Charge.'

On Monday, June the 23d, it was Reſolved by the Lords ſpiritual and temporal in Parliament aſſembled, That the Reſolutions of the Houſe of Commons, in their Votes of the 20th Inſtant, contained moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and were contrived to cover their affected and unreaſonable Delays in proſecuting the impeached Lords; and did manifeſtly tend to the Deſtruction of the Judicature of the Lords, to the rendering Trials and Impeachments impracticable for the future, and to the ſubverting the Conſtitution of the Engliſh Government; and therefore, whatever ill Conſequences might ariſe, from the ſo long deferring the Supplies of this Year's Service, were to be attributed to the fatal Council of the putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

Trial of the Earl of Orford.

Then the Lords adjourned to Weſtminſter-hall, and after two Proclamations made for Silence and Proſecution, the Articles of Impeachment againſt Edward Earl of Orford were read, and alſo his Lordſhip's Anſwer to the ſaid Articles; and after taking the ſame Methods as in the Trial of the Lord Somers, his Lordſhip, by unanimous Votes, was acquitted of the Articles, and the Impeachment was diſmiſſed.

His Lordſhip honourably acquitted.

On

On Tueſday June the 24th, being the laſt day of the Seſſion of this Parliament, this Order was made by the Lords.

Impeachments diſmiſs'd by the Lords.

'The Houſe of Commons not having preſented their Charge, which they brought up againſt John Lord Haverſham, for Words ſpoken by him at a Free Conference the 13th Inſtant, the ſaid Charge is hereby diſmiſſed. The Earl of Portland being impeached by the Houſe of Commons of high Crimes and Miſdemeanours, the firſt day of April laſt, the Impeachment is hereby diſmiſſed, there being no Articles exhibited againſt him. The Houſe of Commons having impeached Charles Lord Hallifax of high Crimes and Miſdemeanours, on the 15th day of April laſt, and on the 14th day of this Inſtant June exhibited Articles againſt him, to which he having anſwered, and no further Proſecution thereupon, the ſaid Impeachment and Articles are hereby diſmiſſed. At the ſame time, their Lordſhips diſmiſſed an old Impeachment againſt the Duke of Leeds.'

The Affair of the impeached Lords, had ſo much divided both Houſes, that the Correſpondence was almoſt broken off or interrupted with continual Diſagreements. Hence the Commons having paſſed a Bill for appointing Commiſſioners to take, ſtate, and examine the public Accounts, the Lords made ſome Amendments to it, which the Commons would by no means allow; and drew up theſe Reaſons for their Diſagreement, to be offered to the Lords at a Conference.

Bill for ſtating the public Accounts, amended by the Lords.

The Commons diſagree.

'The Commons do diſagree to the firſt Amendment made by the Lords, becauſe it is notorious, that many Millions of Money have been given to his Majeſty by the Commons, for the Service of the Public, which remain yet unaccounted for, to the great diſſatisfaction of the good People of England, who chearfully contributed to thoſe Supplies. And their Lordſhips firſt Amendment prevents any account being taken of thoſe Moneys, by the Commiſſioners appointed by the Commons for that purpoſe.

Their Reaſons.

'The Commons do diſagree to the ſecond Amendment made by the Lords, becauſe John Parkhurſt and John Paſcall, Eſqs; have for ſeveral Years been Commiſſioners of the Prizes taken during the late War, and accountable for great Sums of Money ariſing thereby, which ought to be applied to the Uſe of the Public. That the ſaid John Parkhurſt and John Paſcall were frequently preſſed to account for the ſame, by the late Commiſſioners appointed by Act of Parliament; but by many Artifices and Evaſions, delayed and avoided giving any ſuch Account as was required by the ſaid Commiſſioners. That the Clauſe to which their Lordſhips have diſagreed by their ſecond Amendment, requires them to account before the firſt of September next, but by their Lordſhips Amendment they are exempted from giving any ſuch account, which is highly unreaſonable.

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'The Commons do diſagree to the third Amendment, becauſe their Lordſhips have, in a Clauſe, directed the Commons to allow and certify a pretended Debt to Colonel Baldwin Layton; whereas the Diſpoſition as well as granting of Money by Act of Parliament, hath ever been in the Houſe of Commons; and this Amendment relating to the diſpoſal of Money, does intrench upon that Right.

'The Commons do diſagree to the fourth Amendment, becauſe it is notorious, that Edward Whitaker, mentioned in the Rider left out by their Lordſhips, hath by colour of his Impeachment, as Solicitor to the Admiralty, received the Sum of five and twenty thouſand Pounds and upwards of Public Monies, without producing any juſt or reaſonable Vouchers for the Expence thereof; and therefore ought to be accountable for the ſame.

'And that by reaſon of their Lordſhips diſagreeing to the ſeveral parts of this Bill, the Supplies provided by the Commons for paying the Arrears of the Army, muſt of neceſſity be ineffectual till another Seſſion of Parliament.'

To interrupt theſe fatal Diſputes between the two Houſes, it was the greateſt Wiſdom of his Majeſty, firſt to take no notice of them, and then to put a more ſpeedy end to this Seſſion; and therefore on the ſaid Tueſday, June 24th, the King came to the Houſe of Peers, and ſent for the Commons to attend him; when Mr. Speaker upon preſenting the Money-Bills, delivered himſelf to his Majeſty in this Speech.

The Speaker's Speech to the King.

'Sir, it is with great Joy and Satisfaction that I attend your Majeſty at this time, ſince your Commons have complied with all your Majeſty was pleaſed to deſire at their meeting. They have paſſed the Bill of Succeſſion, which hath ſettled the Crown in a Proteſtant Line, and continued the Liberty of England, which your Majeſty hath reſtored and preſerved. They have paſſed a Bill for taking away thoſe Privileges, which might have proved Burthenſome and Oppreſſive to your Subjects. They have given your Majeſty thoſe Supplies which are more than ever were given in a time of Peace, to enable your Majeſty when you are abroad, to ſupport your Allies, procure either a laſting Peace, or to preſerve the Liberties of Europe by a neceſſary War.'

His Majeſty then gave the Royal Aſſent to the following Bills.

An Aid for the Expence of the Navy, Guards and Garriſons for one Year. An Act for ſeveral Duties upon Low Wines, Coffee, Tea, Chocolate, Spices and Pictures, and Impoſitions on Hawkers, Pedlars and Petty Chapmen, &c. *An Act for* 3700 *l. Weekly, out of the Exciſe for the Service of his Majeſty's Houſhold,* &c.

His Majeſty then expreſs'd himſelf as follows:

'My

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'My Lords and Gentlemen,

'THE Seſſion being now come to a Concluſion, I muſt 'return you my hearty Thanks for the great Zeal 'you have expreſſed for the Public Service, and your ready 'Compliance with thoſe things which I recommended to you 'at the opening of this Parliament. And I muſt thank you, 'Gentlemen of the Houſe of Commons in particular, both 'for your Diſpatch of thoſe neceſſary Supplies, which you 'have granted for the Public Occaſions, and for the En- 'couragements you have given me, to enter into Alliances 'for the Preſervation of the Liberty of Europe, and the 'Support of the Confederacy; in which, as it ſhall be my 'Care, not to put the Nation to any unneceſſary Expence, 'ſo I make no doubt, that whatſoever ſhall be done during 'your Receſs, for the Advantage of the common Cauſe in 'this matter, will have your Approbation at our meeting 'again in the Winter.

King's Speech.

'My Lords and Gentlemen, I ſhall conclude with re- 'commending to you all, the Diſcharge of your Duties in 'your reſpective Counties; that the Peace of the Kingdom 'may be ſecured, by your Vigilance and Care in your ſe- 'veral Stations.'

Then the Lord-Keeper (by his Majeſty's Command) pro- rogued the Parliament until Thurſday the 7th day of Auguſt next; which was ſoon afterwards diſſolved.

A new Parliament met the 30th of December, when the King came to the Houſe of Peers, and ſending for the Com- mons, the Lord-Keeper ſignified his Majeſty's Pleaſure, that they ſhould forthwith proceed to the Choice of a Speaker, and preſent him next Morning: The Competition was be- tween Mr. Harley and Sir Thomas Littleton, to which latter the King and Court inclined; but the former was elected by a Majority of fourteen Votes; who being the next Day pre- ſented and approved, his Majeſty made this memorable Speech to both Houſes.

Sixth Parliament.

'My Lords and Gentlemen,

'I Promiſe myſelf you are met together full of the juſt Senſe 'of the common Danger of Europe, and that Reſent- 'ment of the late Proceeding of the French King, which has 'been ſo fully and univerſally expreſt in the loyal and ſea- 'ſonable Addreſſes of my People.

The King's laſt Speech in Parliament.

'The owning and ſetting up the pretended Prince of 'Wales for King of England, is not only the higheſt In- 'dignity offered to me and the whole Nation, but does ſo 'nearly concern every Man, who has a regard for the Pro-

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'teſtant Religion, or the preſent and future Quiet and Happineſs of your Country, that I need not preſs you to lay it 'ſeriouſly to heart, and to conſider what further effectual 'means may be uſed, for ſecuring the Succeſſion of the 'Crown in the Proteſtant Line, and extinguiſhing the Hopes 'of all Pretenders, and their open or ſecret Abettors.

'By the French King's placing his Grandſon on the Throne 'of Spain, he is in a Condition to oppreſs the reſt of Europe, 'unleſs ſpeedy and effectual meaſures be taken. Under this 'Pretence he is become the real Maſter of the whole Spaniſh 'Monarchy; he has made it to be entirely depending on 'France, and diſpoſes of it as of his own Dominions; 'and by that means he has ſurrounded his Neighbours in 'ſuch a manner, that though the Name of Peace may be 'ſaid to continue, yet they are put to the Expence and In-'conveniencies of War. This muſt affect England in the 'neareſt and moſt ſenſible manner, in reſpect to our Trade, 'which will ſoon become precarious in all the valuable Bran-'ches of it; in reſpect to our Peace and Safety at home, 'which we cannot hope ſhould long continue; and in reſpect 'to that part which England ought to take, in the Preſerva-'tion of the Liberty of Europe.

'In order to obviate the general Calamity, with which 'the reſt of Chriſtendom is threatned by this exorbitant 'Power of France, I have concluded ſeveral Alliances, ac-'cording to the encouragement given me by both Houſes 'of Parliament; which I will direct ſhall be laid before 'you, and which I do not doubt you will enable me to 'make good.

'There are ſome other Treaties ſtill depending, that 'ſhall be likewiſe communicated to you as ſoon as they are 'perfected.

'It is fit I ſhould tell you, the Eyes of all Europe are 'upon this Parliament, all matters are at a ſtand till your 'Reſolutions are known, and therefore no time ought to 'be loſt.

'You have yet an Opportunity by God's Bleſſing, to ſe-'cure to you and your Poſterity the quiet Enjoyment of 'your Religion and Liberties, if you are not wanting to 'yourſelves, but will exert the ancient Vigour of the Eng-'liſh Nation: But I tell you plainly my Opinion is, if you 'do not lay hold on this Occaſion, you have no reaſon to 'hope for another.

'In order to do your part, it will be neceſſary to have 'a great Strength at Sea, and to provide for the Security of 'our Ships in Harbour; and alſo, that there be ſuch a Force 'at Land as is expected in proportion to the Forces of our 'Allies.

'Gentlemen

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'Gentlemen of the House of Commons, I do recommend 'these Matters to you with that concern and earnestness, 'which their Importance requires: At the same time I can'not but press you to take care of the Public Credit, which 'cannot be preserved but by keeping sacred that Maxim, 'that they shall never be Losers, who trust to a Parliamen'tary Security.

'It is always with regret when I do ask Aids of my People; 'but you will observe, that I desire nothing which relates to 'any personal expence of mine; I am only pressing you to 'do all you can for your own Safety and Honour, at so cri'tical and dangerous a time; and am willing that what is 'given shall be wholly appropriated to the purposes for 'which it is intended.

'And since I am speaking on this Head, I think it proper 'to put you in mind, that, during the late War, I ordered 'the Accounts to be laid Yearly before the Parliament, and 'also gave my Assent to several Bills for taking the Public 'Accounts, that my Subjects might have Satisfaction how 'the Money given for the War was applied: And I am wil'ling that Matter may be put in any farther Way of Exa'mination; that it may appear whether there were any mis'applications and mismanagements, or whether the Debt 'that remains upon us, has really arisen from the shortness 'of the Supplies, or the Deficiency of the Funds.

'I have already told you how necessary Dispatch will be, 'for carrying on that great Public Business, whereon our 'Safety, and all that is valuable to us depends I hope, 'what time can be spared, will be employed about those 'other very desirable things, which I have so often recom'mended from the Throne; I mean, the forming some good 'Bills for employing the Poor, for encouraging Trade, and 'the farther suppressing of Vice.

'My Lords and Gentlemen, I hope you are come toge'ther, determined to avoid all manner of Disputes and Dif'ferences, and resolved to act with a general and hearty 'Concurrence, for promoting the common Cause; which 'alone can make this a happy Session.

'I should think it as great a Blessing as could befal Eng'land, if I could observe you as much inclined to lay aside 'those unhappy, fatal Animosities, which divide and weaken 'you, as I am disposed to make all my Subjects safe and easy, 'as to any, even the highest, Offences committed against 'me.

'Let me conjure you to disappoint the only Hopes of our 'Enemies, by your Unanimity. I have shewn, and will 'always shew, how desirous I am to be the common Father 'of all my People: Do you in like manner lay aside all

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'Parties and Diviſions; let there be no other Diſtinction 'heard of among us for the future, but of thoſe who are for 'the Proteſtant Religion, and the preſent Eſtabliſhment, 'and of thoſe who mean a Popiſh Prince and a French Go-'vernment.

'I will only add this, if you do in good earneſt deſire to 'ſee England hold the Balance of Europe, and to be indeed 'at the head of the Proteſtant Intereſt, it will appear by your 'right improving the preſent Opportunity.'

On the 5th of January the Commons preſented their Addreſs as follows.

Addreſs of the Commons.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons of England in Parliament aſſembled, do return our moſt humble and hearty Thanks to your Majeſty, for your moſt gracious Speech from the Throne; and humbly crave leave to aſſure your Majeſty, that this Houſe will ſupport and defend your Majeſty's lawful and rightful Title to the Crown of theſe Realms, againſt the pretended Prince of Wales, and all his open and ſecret Abettors and Adherents, and all other your Majeſty's Enemies whatſoever. And we will enable your Majeſty, to ſhew your juſt Reſentment of the Affront and Indignity offered to your Majeſty and this Nation, by the French King, in taking upon him to declare the pretended Prince of Wales King of England, Scotland and Ireland: And we are firmly and unanimouſly reſolved to maintain and ſupport the Succeſſion to the Imperial Crown of this Realm, and the Dominions and Territories thereunto belonging, in the Proteſtant Line, as the ſame is ſettled by an Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown; and farther provided for, by an Act of the laſt Parliament, entitled, *An Act for the farther Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject.* And for the better effecting the ſame, we will, to the utmoſt of our power, enable your Majeſty to make good all thoſe Alliances your Majeſty has made, or ſhall make, purſuant to the Addreſſes and Advice of your moſt dutiful and loyal Commons of the laſt Parliament, for the preſerving the Liberties of Europe, and reducing the exorbitant Power of France.

To which his Majeſty gave this Anſwer:

King's Anſwer.

'Gentlemen, I give you my hearty Thanks for this Addreſs, which I look upon as a good Omen for the Seſſion. 'The Unanimity with which it paſſed, adds greatly to the 'Satisfaction I receive from it; ſo good a ſtep at your firſt 'entrance upon Buſineſs, cannot but raiſe the hopes of all who 'wiſh well to England and to the common Cauſe. I can

'deſire

'desire no more of you than to proceed as you have begun; 'and I depend upon it: For when I consider how chearfully 'and universally you concurred in this Address, I cannot 'doubt but every one of you will sincerely endeavour, to 'make it effectual in all the Parts of it.' Anno 13 W. III. 1701.

In the mean time, Mr. Secretary Vernon, by Command, laid before the House Copies of the Treaties of the Grand Alliance: 1. A Treaty between the King of Denmark and the States-General, 15 June 1701. 2. Secret Articles of Treaty with Denmark, 15 June 1701. 3. Treaty between the Emperor, his Majesty, and the States-General, 7 Sept. 1701. 4. A Convention between the King of England, the King of Sweden and the States-General, 26 April 1701. 5. A Treaty between the King of England and the States-General. All which were so well approv'd, that the House immediately resolv'd, on the 7th of January, That a Supply be granted to his Majesty. And that whosoever shall advance or lend unto his Majesty's Exchequer, the Sum of 600,000 l. for the Service of the Fleet, shall be repaid the same with Interest at *6 per Cent.* out of the first Aids to be granted this Session. There was 50,000 l. added to this Vote for Guards and Garrisons. They order'd an Account of the Debts of the Nation unprovided for to be laid before them, and on Jan. 9, Resolv'd *Nemine Contradicente*, 'That leave be given to bring in a Bill for the farther Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and extinguishing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors.' And on the next Day they farther resolv'd, 'That an humble Address be presented to His Majesty, that he will be graciously pleas'd to take care that it be an Article in the several Treaties of Alliance with his Majesty and other Potentates, That no Peace shall be made with France, until his Majesty and the Nation have Reparation for the great Indignity offered by the French King, in owning and declaring the pretended Prince of Wales, King of England, Scotland and Ireland. To which the King gave a chearful Answer, 'I will take care 'of what you desire.' The House agreed at the same time, 'That the Proportion of Land-Forces to act in conjunction with the Forces of the Allies for making good the Alliances, be forty Thousand Men, and forty Thousand more for Sea-Service. They proceeded to a Bill for the Attainder of the pretended Prince of Wales. The Lords were intent upon the same Measures, and passed a Bill *for the Security of his Majesty's Person and Government, and for maintaining the Succession of the Crown, according to the two late Acts of Parliament*, which

Treaties laid before the House.

Vote of Supply.

Further Resolutions with regard to the Protestant Succession.

Votes for the Land and Sea-Service.

Anno 13 W. III. 1701.

they ſent down to the Commons, who, after twice reading, let it lie upon their Table, as thinking their own depending Bills more effectual; yet the chief of theſe Bills, that *for Security of his Majeſty's Perſon*, &c. was likely to have miſcarry'd by an Inſtruction to the Committee, that they take care that the Oath in the ſaid Bill mention'd be voluntary. But this Offer being put to the Queſtion, it paſs'd in the Negative.

And on the 22d of January, they gave a much better Inſtruction to the ſame Committee, 'That they do take care to make it equally penal to compaſs or imagine the Death of her Royal Highneſs the Princeſs Anne of Denmark, as it is to compaſs or imagine the Death of the King's eldeſt Son and Heir, by the Statute of 25 Edward III.' They alſo order'd a Bill to be brought in for continuing the Quaker's Bill, by which their ſolemn Affirmation and Declaration ſhould be accepted inſtead of an Oath.

On the 3d of February, the Houſe reſolved that 350,000 l. be granted to his Majeſty for Guards, and Garriſons, and Half-Pay Officers; as alſo that an humble Addreſs be preſented to his Majeſty that he will be pleas'd to interpoſe with his Allies, that they may increaſe their Quota's of Land-Forces to be put on board the Fleet. His Majeſty's Anſwer was, 'I will do it.' And upon their Addreſs to employ the Half-Pay Officers in the new Levies, he was pleas'd to ſay, 'It was always my Intention.'

The Commons aſſert their Privileges.

In the controverted Election at Maidſton, between Thomas Bliſſe and Thomas Colepepper, Eſqrs; the Houſe of Commons reſolved, 'That the latter had been guilty of corrupt, ſcandalous and indirect Practices, in endeavouring to procure himſelf to be elected a Burgeſs; and being one of the Inſtruments in promoting and preſenting the ſcandalous, inſolent and ſeditious Petition, commonly called the Kentiſh Petition, to the laſt Houſe of Commons, was guilty of promoting a ſcandalous, villanous and groundleſs Reflection upon the ſaid Houſe of Commons, by aſperſing the Members with receiving French Money, or being in the Intereſt of France; for which Offence he ſhould be committed to Newgate, and his Majeſty's Attorney-General ſhould proſecute him for the ſaid Crimes.'

Under this Indignation, they reſolved, on February the 26th, That, agreeable to the Opinions of a Committee appointed to conſider of the Rights, Liberties and Privileges of the Houſe of Commons, to aſſert that the Houſe of Commons is not the only Repreſentative of the Commons of England, tends to the Subverſion of the Rights and Privileges of the Houſe of Commons, and the fundamental Conſtitution of the Government of this Kingdom. 2d, That to aſſert that the Houſe of Commons have no Power of Commitment,

mitment, but of their own Members, tends to the Subverſion of the Conſtitution of the Houſe of Commons. 3d, That to print or publiſh any Books or Libels reflecting upon the Proceedings of the Houſe of Commons, or any Member thereof, for, or relating to his Service therein, is a high Violation of the Rights and Privileges of the Houſe of Commons. 4th, That it is the undoubted Right of the People of England, to petition to addreſs to the King for the calling, ſitting or diſſolving of Parliaments, and for the redreſſing of Grievances. 5th, That it the undoubted Right of every Subject of England, under any Accuſation, either by Impeachment or otherwiſe, to be brought to a ſpeedy Trial, in order to be acquitted or condemned. Anno 14 W. III. 1701.

The 28th, the King ſent the following Meſſage to the Houſe.

WILLIAM R.

'His Majeſty being hinder'd by an unhappy *Accident from coming in Perſon to his Parliament, is pleaſed to ſignify to the Houſe of Commons, by Meſſage, what he deſigned to have ſpoken to both Houſes from the Throne. His Majeſty, in the firſt Year of his Reign, did acquaint the Parliament, that Commiſſioners were authoris'd in Scotland to treat with ſuch Commiſſioners as ſhould be appointed in England, of proper Terms for uniting the two Kingdoms, and at the ſame time expreſs'd his great Deſire of ſuch an Union. His Majeſty is fully ſatisfy'd, that nothing can more contribute to the preſent and future Happineſs of England and Scotland, than a firm and entire Union between them, and he cannot but hope that upon a due Conſideration of our preſent Circumſtances, there will be found a general Diſpoſition to this Union. His Majeſty would eſteem it a peculiar Felicity, if, during his Reign, ſome happy Expedient for making both Kingdoms one, might take place; and is therefore extremely deſirous that a Treaty for that Purpoſe might be ſet on foot, and does in the moſt earneſt Manner recommend this Affair to the Conſideration of the Houſe.' King's Meſſage to the Commons for an Union with Scotland.

The Commons appointed firſt one, and then another Day, to conſider of this Meſſage, but the Shortneſs of his Majeſty's Life prevented their coming to any Reſolution.

The King ſeem'd in a fair way of doing well, 'till on Sunday the firſt of March a Defluxion fell upon his Knee, which was a great Pain and Weakneſs to him, and taken for a very ill Symptom: he thought it ſo himſelf, and took it for a Warning for Diſpatch of Public Affairs. Therefore the next Morning this Meſſage was ſent from the Houſe of Peers to the Houſe of Commons.

Mr.

* *He fell from his Horſe near Hampton-Court Feb. 21, which occaſioned his Death the 8th of March following.*

Anno 34 W. III. 1701.

Meſſage from the Lords.

Mr. Speaker, The King has granted a Commiſſion under the Great-Seal for paſſing the Royal Aſſent to thoſe Bills, which have been agreed to by both Houſes of Parliament, and the Lords commiſſion'd by the King do deſire that this Houſe would preſently come up with their Speaker, to be preſent at the paſſing thereof.

Acts paſs'd by Commiſſion.

Then the Speaker with the Houſe went up, and the Lord-Keeper acquainted both Houſes, That his Majeſty by an unhappy Accident had been prevented from coming in Perſon, and had granted a Commiſſion to ſeveral Peers for paſſing the Bills therein mentioned. The Lords ſo commiſſion'd were Sir Nathan Wright Lord-Keeper, the Earl of Pembroke Lord High-Admiral, the Duke of Devonſhire, the Earl of Carliſle, and the Earl of Jerſey, who, March the ſecond, the Commons being at the Lords-Bar, gave the Royal-Aſſent to *An Act for Attainting the Pretended Prince of Wales: An Act for puniſhing Mutiny and Deſertion: An Act for the ſolemn Affirmation of the People called Quakers*, and to ſome private Acts. On the 7th of March, the Lord-Keeper went to Kenſington with a Commiſſion to be ſign'd by his Majeſty for the paſſing of *the Abjuration-Bill, the Malt-Tax Bill*, and what other Bills were ready for the Royal Aſſent. Which was done accordingly; being one of the laſt public Acts of his Majeſty's Life.

The Pretender attainted.

Certain SPEECHES of Sir CHARLES SEDLEY'S, *on various Occaſions, in, and after the Year* 1699.

A Speech in Parliament, on the Bill for diſbanding the Army, 1699.

'I Hope my Behaviour in this Houſe has put me above the Cenſure of One who would obſtruct his Majeſty's Affairs; I was as early in the Apprehenſions of the Power of France as any Man: I never ſtuck at Money for Fleets, Armies, Alliances, or whatever Expences ſeem'd to have the Preſervation of our new-ſettled Government for their End. I am ſtill of the ſame Mind; but that was War, and this is Peace; and if I ſhall now differ from ſome worthy Gentlemen, who have ſpoke before me, they will be ſo juſt as to believe it is not about the End, but the Means we contend.

'Some may think England cannot be ſafe without a Standing-Army of 30,000 Men; and will tell us the King of France has 200,000 in Pay, diſciplin'd Troops; that all our Neighbours are armed in another Manner than they were wont to be; that we muſt not imagine that we can defend ourſelves with our ordinary and legal Forces.

'All this is very material, and wou'd have great weight with me, if England were not an Iſland acceſſible only by Sea; and in that Caſe, not till they have deſtroy'd our Navy, which,

which is, or may be made ſuperiour to any Force that can be brought againſt us. Anno 12 W. III. 1700.

'It is very difficult to land Forces in an Enemy's Country; the Spaniſh Armada was beaten at Sea, and never ſet foot on Engliſh Ground; his preſent Majeſty with all the Shipping of Holland, could bring over but 14,000 or 15,000 Men, and that ſo publicly, that nothing but an infatuated Prince would have permitted their landing. Our Attempts upon Breſt ſhew us, that it is eaſy with a ſmall Force to prevent an Aſſault from t'other ſide of the Water. As we are capable of being attack'd in ſeveral Places, ſo it may be urg'd, as Reaſon, for ſeveral Troops more than our Purpoſes can bear; but if we burden the People thus far in Peace, it may tempt ſome to wiſh for War again, every Change carrying a Proſpect of better Times, and none can make it worſe than a Standing-Army (of any Number of Men) will at preſent. If we are true to ourſelves, 10,000 Men are enough; and if not, 100,000 too few.'

A Speech upon the Vote for bringing in a Bill for Diſſolving the Parliament, by an Act of the Legiſlative Power.

'THAT the Bill paſs'd the Lords unanimouſly, ought to be no Argument for us to paſs it; for were any thing propos'd to their diminution, it would find as eaſy a Paſſage in this Houſe: How fond were we of taking away their *Scandalum Magnatum*? I remember we loſt a very good Bill by attempting, and they by refuſing it; but they would not then, nor do they now, offer up any thing of their own for the Public Benefit; there is not one Word concerns themſelves in this Popular Bill. We have ſate too long; we muſt never hereafter ſit above three Years: They would eaſe the People, but it muſt be all at the Expence of the Houſe of Commons, not a Privilege of their own muſt be ſhaken. 'Tis urged, we are the People's Embaſſadors, or Attorneys, as others ſay; and they ought to have a Power to change us, if they find we act contrary to the nature of the Truſt repos'd in us, or are corrupted to a Court-Intereſt, that they are any ways diſſatisfied with our Prudence or Integrity; and therefore be it enacted, a new Parliament ſhall be choſen every three Years. Truly I cannot ſee any Security for the People againſt an ill Parliament in this Act; for a corrupt Houſe of Commons may undo the Nation in three Years, as well as in thirty: For admit any one Parliament to be ſo far corrupted, as to paſs Laws to the Injury of Liberty or Property, they can never be repeal'd but by the Act of the King and Lords; who, when once they have thought it their Intereſt to procure ſuch Laws, will never conſent to the Repeal of them: For tho' the Houſe of Commons will be new every

Anno 12 W. III. 1700.

every three Years, the King and the Houſe of Lords will be ſtill the ſame in Intereſt, if not perſonally: So that one ill Parliament, tho' but of three Years continuance, may prove a Diſeaſe incurable. But Men will ſay, 'tis better the People ſhould chuſe a new Parliament every three Years, than that the ſame Repreſentatives ſhould be continu'd upon them at the King's Pleaſure, how negligently, how imprudently, how diſſatisfactorily ſoever they perform their Duty in the Houſe. This is not to be anſwer'd: But we ought to have ſo much Eſteem for our Prince, as not to think he will long continue ſuch a Parliament upon us, and to give him a little Latitude in the calling and diſſolving Part; ſo as not to tye him ſtrictly to the Letter of thoſe Laws, which, as I told you before, never were obſerved by any of his Predeceſſors, nor rigorouſly inſiſted upon by any of ours. When he ſhall have made a conſiderable Tranſgreſſion, 'twere then time enough to enter our Complaint: But, ſay ſome Gentlemen, on the other ſide, good Laws are never to be obtain'd, but in the Reign of a good King; therefore this is the time to preſs for ſo good a Law as this is, that may keep an ill-diſpos'd Prince in order. Truly I do not ſee it provides againſt any thing, but that an ill Prince ſhall not enſlave us by one continu'd long Parliament; but he may do it by a triennial one, whenever he and they can agree about it; nor call theſe Parliaments, but when the King has Buſineſs for them, and has alſo a ſtrong Preſumption, they will comply for the Adjourning, Proroguing, and Diſſolving ſuch Parliaments as he diſlikes. Thus all will be in his power, tho' this Act paſs; and even triennial Parliaments cannot give us a certain Remedy, in caſe of any Invaſion upon our Liberty and Property; for it is the King that muſt appoint Time and Place. Tho' the Houſe of Lords and Commons are eſſential Parts of the Engliſh Government, yet in this politic Exiſtence they depend upon the Will and Pleaſure of our Kings. The People of England are the ſame, their Reaſons of Chuſing the ſame, and I queſtion not but they will ſend us the ſame Men, or the ſame ſort of Men again. Mr. Speaker, I can by no Means approve of this Bill at this Time: But my main Exception lies againſt the Clauſe which requires the Diſſolution of this preſent Parliament, by an Act of the Legiſlative Power. Never was there any ſuch Invaſion upon the Prerogative of a King, never ſuch an Indignity offer'd to an Houſe of Commons in being. The next Houſe may take other Meaſures than we have done, and then what is got by a new Parliament? If they take others, you know not what Diſorders may follow.'

Another

Another Speech upon the ſaid Bill, for Diſſolving the Parliament.

Anno 12 W. III. 1700.

'THE long Parliament of Forty, was declar'd extinguiſh'd by Act of Parliament, but all the World ſaw what they attempted, and what they executed: And I hope we ſhall never paſs an Act that may couple us in Hiſtory with that Sort of Men.

'Mr. Speaker, I have ſeen ſeveral Parliaments in this Houſe, yet never could obſerve any great Change of Proceeding, till the whole Nation was alarm'd at the Duke of York's declaring himſelf a Papiſt, the Diſcovery of the Popiſh Plot, and King Charles the Second's being ſuſpected for that Religion: Then there was a Change indeed; but I hope we have no Calamities of that Magnitude now to provide againſt: Our King is in our Intereſt abroad; he is an utter Enemy to France; he is a good Proteſtant: We are ready with our Purſes to ſupport him in the Defence of our Liberty, Religion and Property; we are honeſt in the main, and I cannot ſee the Nation can be in better Hands; however, let us be extinguiſh'd in the uſual Way of Parliament, and not pull on ourſelves a violent, and, I think, an ignominious Death, by an Act of the Legiſlative Power for our Extinction. The long Parliament could not be diſſolv'd but by Act of Parliament; for they had obtain'd an Act for their Continuance, which could not be annull'd but by an Act for their Diſſolution; and therefore they were of neceſſity ſo dealt with.—

'To conclude, Sir, for theſe and many other Reaſons given me by Gentlemen, who ſpoke before me, I am againſt this Bill at this time.

''Tis ſaid other Gentlemen have a Right and a juſt Expectation of Sitting in this Houſe in their Turns, as well as we that are now here, which this Bill will put them in Poſſeſſion of; but that Argument ſuppoſes this Parliament will be continu'd for ever, if this Houſe of Commons be not extinguiſh'd by this Law at this time, which I can no ways admit of: We are all for frequent Parliaments, as well thoſe againſt the Bill, as thoſe who are for it; but ſome of us had rather obtain it from ſome ordinary Act of the King's Prerogative, or ſuch Occaſions, than extort them by a written Law, which may be of too ſtiff a Temper to bend or comply with ſuch Emergencies of State, as may perhaps make the Continuance of the ſame Parliament a Seſſion longer than the Law allows very advantageous, if not altogether neceſſary. I ſhould have liked this Bill better if it had begun in our own Houſe; then it had been a Self-denying Bill indeed; but now it looks like a Surprize upon us from the Lords, and brings us under this Dilemma, that if we paſs it, we throw ourſelves immediately out of this Houſe; if we

Anno 12 W. III. 1700.

reject this ſeeming popular Bill, we hazard our Elections into the next Parliament; for we are told by ſuch as would have it paſs, that the Gentlemen who are againſt this new Choice of the People, cannot expect to be elected by them into the next Parliament: Thus we are to overlook all Conſiderations of State and public Concernment, and paſs this Bill in order to gratify our Corporations, that they may chuſe us again. Truly, Sir, for my part, I renounce thoſe partial Meaſures, and if I cannot be choſen upon the Account of general Service to the Nation, I will never creep into the Favour of any Sort of Men, and Vote againſt my Judgment.'

Upon the Bill relating to the Civil Liſt.

'WE ſhall, I hope, return to our Vote, and make Proviſion by a Bill, or otherwiſe a Clauſe in this or ſome other, that no Member of Parliament may be concern'd in the Revenue: For it ſounds, Mr. Speaker, harſh, that the ſame Men ſhould be both Givers and Receivers of the Revenue. The worthy Gentleman, that ſpoke laſt, tells you we can expect nothing toward this Supply from the Revenue, for that the ordinary Revenue will not pay the Civil Liſt by 100,000 l. I ſuppoſe he means the Civil Liſt, as it ſtands now. But there was not long ago an Offer made by the Courtiers, that the Profits, Fees and Salaries of their reſpective Offices and Places exceeding 800 l. *per Annum* clear Money, ſhould go toward the Charge of the War; and then I hope we may expect ſomething. Sir Harry Vane did a thing of this kind in Cromwell's time, being then Treaſurer of the Navy, he acquainted the Houſe, that the Profits of his Office were too great, for any particular Perſon, during ſuch Diſtreſs and Calamity of the Commonwealth, and deſired he might have a convenient Salary, and the reſt go toward the Charge of the War. Now to find a whole Set of Courtiers as generous as I had ever yet known any one Man, charm'd me exceedingly; I think I broke into ſome Raptures of Kindneſs towards the worthy Gentlemen who ſhew'd ſuch Zeal for their Maſter's Service, and the Defence of the Nation, as to part with ſomething of their own, as well as ours for thoſe public Ends.

'Mr. Speaker, The King and People have always the ſame Intereſt, and it is not the King's to take one Penny more from the People than will juſt carry on the Government; it is the People's Intereſt to give him full as much: But it is the Courtiers Intereſt to get all they can for him here, that they may obtain their Requeſt the more eaſily at Whitehall: That the Intereſt of the King and Courtier do ſometimes differ, I think I can give you an undeniable Inſtance: King Charles

Charles the Second, when he came to the Crown had 360,000l. *per Annum* in Land; it was certainly the Intereſt of the Crown he ſhould have kept thoſe Lands deſcending to him from his Anceſtors, that they might have been a conſtant Support and Supply for ſuch Occaſions as could not wait the Delays and Method of Parliaments; it was the People's Intereſt that the King ſhould have kept that Revenue, for having ſo much of his own, he might lie the leſs heavy upon them: Yet the Courtiers prevail'd, and got away that whole Revenue in a few Years, devouring not only the Income but the very Stock of their Maſter's Liberality; and, as I humbly conceive, contrary to the Intereſt of both King and People, and even of all ſucceeding Courtiers; whom we find ſince quarter'd upon other Branches of the Revenue. King James thought 500 l. *per Annum* ſufficient for the Gentlemen of his Bed-Chamber; certainly that Salary may ſuffice a Man that has an Eſtate of his own already, and is as much as any Waiting-man can pretend to for his Service.' Anno 12 W. III. 1700.

Upon the Bill for Ways and Means, &c.

'I Believe, Mr. Speaker, when we come to conſider of it, we ſhall find, that it is convenient, not only to leſſen the Officers of the Court, and State, in point of Profit, but in point of Number too; we have nine Commiſſioners of Exciſe, ſeven of the Admiralty, three of the Poſt-Office, ſix of the Cuſtoms; I know not why half may not do the Buſineſs as well. But when I conſider all theſe, or moſt of them, are Members of Parliament, my Wonder is over; for tho' it may be a Diſpute, whether many Heads are better than one, 'tis certainly true, that many Votes are better than one: Many of theſe Gentlemen have two Offices beſides their Seat in Parliament, which require Attendance in ſeveral Places, and Abilities of divers Natures; but Members of Parliament, tho' well principled, have no Privileges to be fit for any thing without Practice, Study or Application.

'Sir, we are call'd by the King, and ſent up by the People, and ought to regard no Intereſts but theirs; which, as I told you before, are always the ſame; let us therefore proceed accordingly. The late Propoſals of the Courtiers themſelves, to ſave the King Money, was, by applying the Profits, Salaries and Fees of their Places, that exceed 800 l. *per Annum*, to the War; thus will the Public Charge lie eaſier upon the People, and the preſent Reign be more and more endeared to them. What is neceſſary we ſhall chearfully ſupply, when we ſee all Men ſet their Shoulders to the Burden, and ſtand upon an equal Footing for our common Defence, and that what we give, is apply'd to thoſe Uſes for which we give, and the Army paid. This Offer, Sir, as I remem-

Anno 12 W.III. 1700.

ber, began when an Obſervation was made by you of the long Accounts, and that a great Part of the King's Revenue remain'd in the Hands of the Receivers; to which a worthy Member anſwered, It could not be help'd, by reaſon ſome Receivers were Members of Parliament, and ſtood upon their Privileges. To which another Member anſwered, That we could not deprive Members of their Privilege, but that to remedy the like for the future, we were ready to paſs a Vote, that no Member of Parliament ſhould be a Receiver of the King's Revenue. This alarm'd the whole Body of Men in Office; ſo that ſome ſtood up, and (to prevent the Houſe from harping any longer upon that String) ſaid, They ſo little valued their own Profit, that they were willing to reſign all their Fees, Salaries, and Perquiſites, exceeding 300 l. *per Annum*, toward the next Year's Charge. This, if really intended, was very generous; but if it were only a Compliment, Shift or Expedient, to avoid the preſent Vote we were upon, That no Member of Parliament ſhould be Receiver of the Revenue, nothing was more diſingenuous; nor could a greater Abuſe be offered to the Houſe, for we proceeded ſo far as to vote, That Judges and ſome others ſhould not be comprehended. People abroad that received our Votes will think ſtrangely of it, if, after all thoſe Preparations, we do nothing in it, and ſuffer ourſelves to be thus gull'd: But I hope better of the worthy Gentlemen, and cannot but think they were in earneſt with this Houſe upon ſo ſolemn a Debate.'

Upon the Bill for Trials, &c.

'MR. Speaker, the Trial by their Peers could never be meant Peers of the King's Appointment: I take the Clauſe in queſtion to be very agreeable to the Title of your Bill; for it is entitled, *A Bill for the more equal Trial of Perſons accus'd of Treaſon, or Miſpriſion of Treaſon.* Upon which the Lords have grafted a Proviſion for themſelves in that Caſe, and no other, and the Proviſion is, that they ſhall be tried out of Parliament, as they are now ſitting in the Parliament: This ſome Gentlemen ſay is a weakning to the Government, which they ſeem to think cannot ſubſiſt, unleſs the Government may at any time reduce what Lords they pleaſe under the Power and Judgment of the Majority of twenty Peers, nominated by the Lord High-Steward. Which certainly is a very great Hardſhip upon the Peerage of England, and puts them in a worſe Condition, as to their Lives and Fortunes, than the meaneſt Commoner of England, who may except againſt three Juries; whereas a Lord cannot except againſt one ſingle Perſon, of thoſe few that are appointed to try, tho' never ſo profeſs'd and ſo open an Enemy to him. Now inſtead of this Privilege of ours, they deſire they may be

tried by the whole Houſe, or ſuch of them as will come to the Trial. Others again ſay, If this Clauſe paſs by reaſon of the mutual Relations and Affinity between the Peers, they will be ready and able to ſave one another. To that may be anſwer'd, That of late the Lords do not much inter-marry, chuſing rather to better their Fortunes by Marriage into the City; the beſt Compoſition, and moſt uſual of late, being Nobility on one ſide, with Money on the other; nor do thoſe ſorts of Obligations laſt longer than the Wedding-clothes. Nor are the Lords ſo conſiderable as formerly, when three or four of them in conjunction could ſhake the Crown: Their Eſtates, and conſequently Intereſts, are ſufficiently decay'd ſince the Statute of Henry the Seventh gave leave to alienate their Lands: They were natural, and many of them now but artificial Lords, like the Catholic Biſhops, *in partibus Infidelium*.—This Clauſe is likewiſe very purſuant to the Prince's Declaration, where nothing is more complain'd of, and abhorr'd, than the Injuſtice and Corruption of the Trials in King James's Reign; and I hope we ſhall never be tenacious of thoſe wicked and indirect Ways of Deſtroying, by which we have loſt many of our beſt Friends; the Lords have Eſtates to make them cautious, but not dangerous: Partiality and Compliance is ever toward the Power in being: The Reigns of Princes are recommended to Poſterity by the good Laws they paſs; and as we have given largely for the Supply of the Government, we may hope to obtain ſomething for the Benefit of thoſe whoſe Money we have been ſo liberal of. We have as yet paſt nothing but Money-Bills, or Bills of a private Nature: 'Tis high time we ſhould do ſomething like a Parliament of England; let us not then here, among ourſelves, ſtifle this our Public Debt, and conſequently deprive his Majeſty of the Glory of paſſing an Act, which moſt Men have in all Ages deſir'd, but could never hope to obtain, but from ſo gracious a Prince.'

Anno 12 W. III. 1700.

The Day the King died, the Princeſs * Anne was proclaimed Queen of England, &c. in the uſual Form.

On

* *The ſame Evening the new Queen made the following Speech to her Privy-Council.*

'My Lords,

'*I Am extremely ſenſible of the general Misfortune to theſe Kingdoms, in the unſpeakable Loſs of the King; and of the great Weight and Burden it brings in particular to myſelf; which nothing would encourage me to undergo, but the great Concern I have for the Preſervation of our Religion, and the Laws and Liberties of my Country: All theſe being as dear to me, as they can be to any Perſon whatſoever. You may depend upon it that no Pains, no Diligence ſhall be wanting on my Part, to defend and ſupport them; to maintain the Succeſſion in the Proteſtant*

Queen's Speech to the Council.

'*Line,*

Anno 1 Ann. 1701.

On the 11th of March, her Majeſty went to the Houſe of Peers, where, after ſhe had ſent for the Commons, ſhe thus delivered herſelf to both Houſes.

Her Majeſty's Speech to both Houſes.

'My Lords and Gentlemen,

'I Cannot too much lament my own Unhappineſs, in ſucceeding to the Crown ſo immediately after the Loſs of a King, who was the great Support, not only of theſe Kingdoms, but of all Europe; I am extremely ſenſible of the Weight and Difficulty it brings upon me.

'But the true Concern I have for our Religion, for the Laws and Liberties of England, for maintaining the Succeſſion of the Crown in the Proteſtant Line, and the Government in Church and State, as by Law eſtabliſhed, encourages me in this great Undertaking, which, I promiſe my ſelf, will be ſucceſsful, by the Bleſſing of God, and the Continuance of that Fidelity and Affection of which you have given me ſo full Aſſurances.

'The preſent Conjuncture of Affairs requires the greateſt Application and Diſpatch; and I am very glad to find in your ſeveral Addreſſes, ſo unanimous a Concurrence in the ſame Opinion with me, that too much cannot be done for the Encouragement of our Allies, to reduce the exorbitant Power of France.

'I think it very neceſſary, at this time, to deſire you to conſider of proper Methods for attaining an Union between England and Scotland, which has been ſo lately recommended to you as a Matter that very nearly concerns the Peace and Security of both Kingdoms.

'Gentlemen of the Houſe of Commons,

'I need not put you in mind that the Revenue for defraying the Expences of the civil Government is expired: I rely intirely upon your Affection for the ſupplying of it in ſuch a manner as ſhall be moſt ſuitable for the Honour and Dignity of the Crown.

'My Lords and Gentlemen,

'It ſhall be my conſtant Endeavour to make you the beſt return for that Duty and Affection which you have expreſſed to

'Line, and the Government in Church and State, as it is by Law eſtabliſhed. I think it proper, upon this Occaſion of my firſt ſpeaking to you, to declare my own Opinion of the Importance of carrying on all the Preparations we are making to oppoſe the great Power of France. And I ſhall loſe no Time in giving our Allies all Aſſurances, that nothing ſhall be wanting on my Part, to purſue the Intereſt of England, together with theirs, for the Support of the Common Cauſe.

'In order to theſe Ends, I ſhall be always ready to aſk the Advice of my Council, and of both Houſes of Parliament; and deſirous to countenance and employ all thoſe who ſhall heartily concur and join with me in ſupporting and maintaining the Preſent Eſtabliſhment, againſt all Enemies and Oppoſers whatſoever.'

'to me, by a careful and diligent Adminiſtration for the good of my Subjects: and as I know mine own Heart to be entirely Engliſh, I can very ſincerely aſſure you, there is not any thing you can expect or deſire from me, which I ſhall not be ready to do, for the Happineſs and Proſperity of England; and you ſhall always find me a ſtrict and religious Obſerver of my Word.' Anno 1 Annæ 1702.

The Commons having, by ſuch Members of their Houſe as were of the Privy-Council, returned their humble Thanks to the Queen for her gracious Speech, ſhe gave the Meſſage a very gracious Reception, and was pleaſed to command Sir Charles Hedges to aſſure them, 'That nothing ſhould 'be wanting, that might contribute to their Safety and Welfare.'

In the mean time, the Houſe, in purſuance of their Sunday's Reſolution, having prepared their Addreſs, and agreed to all the Points of it, went in a Body to St. James's, and there preſented the ſame to her Majeſty, as follows:

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, having a deep Senſe of the great Loſs the Nation has ſuſtained, by the Death of our late Sovereign Lord King William the Third, of glorious Memory, who, under God, was our Deliverer from Popery and Slavery, humbly crave leave to condole with your Majeſty, and expreſs our Sorrow upon this ſad Occaſion.' Commons Addreſs to the Queen.

'Your Majeſty's Acceſſion to the Throne (which we moſt heartily congratulate) and your Zeal for our Religion, and the Government, as by Law eſtabliſhed, gives us a certain Proſpect of future Happineſs, moderates our Grief, and engages us unanimouſly to aſſure your Majeſty, that we will, to the utmoſt, aſſiſt and ſupport your Majeſty on the Throne where God has placed you, againſt the pretended Prince of Wales, and all your Enemies. And ſince nothing can conduce more to the Honour and Safety of your Majeſty and your Kingdoms, than the maintaining inviolably ſuch Alliances as have been made, or that your Majeſty ſhall think fit to make with the Emperor, the States-General of the United Provinces, and other Potentates, for preſerving the Liberties of Europe, and reducing the exorbitant Power of *France*; we do aſſure your Majeſty, that we are firmly reſolved, to the utmoſt of our power, to enable your Majeſty to proſecute the glorious Deſign. And that all your Subjects may reſt in a full Aſſurance of Happineſs under your Majeſty's Reign, we will maintain the Succeſſion of the Crown in the Proteſtant Line, according to the Limitation in the ſeveral Acts of Settlement, and effectually provide for, and make good the public Credit of the Nation.

The

Anno 1 Ann. 1702.

The Speaker, on the 10th, having reported, that he had the day before, with the Houſe, attended her Majeſty with this Addreſs; and that the great Croud occaſioning much Noiſe, he had, to avoid any miſtake, deſired a Copy of the Queen's Anſwer, and that her goodneſs was ſuch, that ſhe ſent it to him of her own Hand-Writing, as follows:

Queen's Anſwer.

'Gentlemen, I return you my hearty Thanks for the kind 'Aſſurances you give me in this Addreſs. They cannot be 'any way more agreeably confirmed to me, than by your 'giving diſpatch to all your Preparations for the Public Ser-'vice, and the Support of our Allies.'

Royal Aſſent given to ſeveral Acts.

On the 30th of March, her Majeſty repair'd to the Houſe of Peers, and gave the Royal Aſſent to, *An Act for the better Support of her Majeſty's Houſhold, and of the Honour and Dignity of the Crown. An Act for taking and ſtating the Public Accounts*, &c.

After which ſhe return'd them her kind and hearty Thanks, for continuing to her, for her Life, the ſame Revenue they had granted to the King; which, ſhe was pleaſed to ſay, ſhe would take care ſhould be managed to the beſt Advtanage; and while her Subjects remained under the Burthen of ſuch heavy Taxes, ſhe would ſtreighten her ſelf in her own Expences, rather than not contribute all ſhe could to their Eaſe and Relief; with a juſt regard to the Support of the Honour and Dignity of the Crown.

Queen gives 100,000 l. towards the War.

The next Paragraph of her Speech was extremely Popular: 'It is probable the Revenue may fall ſhort of what it has 'produced. However, I will give Directions, that one hun-'dred thouſand Pounds be apply'd to the Public Service in 'this Year, out of the Revenue you have ſo unanimouſly 'given me.'

The Houſe of Commons, in their Addreſs of Thanks for this Speech, particularly took notice of her Majeſty's unparallel'd Grace and Goodneſs, in contributing out of her own Revenue, to the Eaſe and Relief of her Subjects. And the Lords expreſs'd their Senſe of it, in their Addreſs, with equal Zeal and Gratitude. Her Majeſty told them in her Anſwer, 'That their Approbation of what ſhe did, would always be 'a great Satisfaction to her'.

May 4. War was * declared againſt France, and on the ſame

* *The Cauſes expreſt in the Declaration were, That the late King William had, by the repeated Advice of Parliament, entered into Alliances with the Emperor, States-General, and other Potentates, for preſerving the Liberty and Balance of Europe, and reducing the exorbitant Power of France; becauſe of the French King's unjuſtly taking and keeping Poſſeſſion of great part of the Spaniſh Dominions, exerciſing an abſolute Authority over all that Monarchy; ſeizing Milan, and the Spaniſh Netherlands, by his Armies; making himſelf Maſter of Cadiz, of the Entrance into the Mediterranean, and of the Ports in the Spaniſh Weſt-Indies; deſigning*

ſame Day the Houſe preſented an Addreſs to the Queen on this Occaſion, which was as follows: Anno 1 Ann. 1702.

'Moſt gracious Sovereign, We, your Majeſty's moſt dutiful and loyal Subjects, the Commons of England, in Parliament aſſembled, being highly ſenſible of your Majeſty's great and tender Care for the Safety and Welfare of your People, do, with one Voice, return your Majeſty our moſt humble Thanks, for your gracious Condeſcenſion in communicating to us your Royal Intentions of declaring War, in conjunction with your Majeſty's Allies, againſt the French King and his Grandſon; and we do heartily aſſure your Majeſty, that we will, to the utmoſt, enable your Majeſty to carry on the ſaid War.' Commons Addreſs to the Queen.

To which, the next Day, the Speaker reported back to the Houſe her Majeſty's gracious Anſwer, as follows:

'Gentlemen, I am extremely pleaſed with the aſſurances 'of your Reſolution to aſſiſt and ſupport me in this War. 'I make no doubt, but your Unanimity upon this Occaſion, 'will have a very good effect, for the Encouragement of 'our Allies.' Queen's Anſwer.

And an Addreſs was, likewiſe, preſented by both Houſes, entreating her Majeſty to uſe her Intereſt with her Allies, that all Intercourſe for the future, might be cut off between their Subjects and thoſe of France; to which her Majeſty was pleaſed to return the following Anſwer. An Addreſs of both Houſes to put a ſtop to all Intercourſe between the Allies and France.

'My Lords and Gentlemen, I ſhall propoſe to the Allies 'to join with me in prohibiting all Intercourſe and Com-'merce with France and Spain, according to your Deſire. 'And am too much concern'd for the Public Welfare, to 'omit any neceſſary Cautions for the Protection of our 'Trade.'

May the 6th, the Queen came to the Houſe of Peers, and gave the Royal Aſſent to the following Acts. *An Act for laying a Duty upon Land. An Act for appointing Commiſſioners to treat of an Union with Scotland. An Act to encourage the Greenland Trade. An Act for making good the Deficiencies, and the Public Credit.* And to a great Number of private Acts. Royal Aſſent given to ſeveral Acts.

And the 25th, Her Majeſty came again to the Houſe, and

ſigning to invade the Liberty of Europe, and to obſtruct the Freedom of Navigation. And whereas, inſtead of giving juſt Satisfaction, he has added the Indignity and Affront of declaring the pretended Prince of Wales, King of Great-Britain and Ireland, and has influenc'd Spain to concur in the ſame: Therefore for maintaining the public Faith of Treaties, for vindicating the Honour of the Crown, and for the preventing the Miſchiefs which all Europe is threatned with, Her Majeſty declared War againſt France and Spain, by Sea and Land; and forbad all Communication and Correſpondence with France or Spain, or their Subjects; but promiſed Protection to the Perſons and Eſtates of the Subjects of France and Spain, in her Majeſty's Dominions, who ſhall demean themſelves dutifully.

Anno 1 Ann. 1702.

gave the Royal Aſſent to theſe following, *viz. An Act for continuing in Priſon* ——— *Counter, and others, concern'd in the horrid Conſpiracy againſt his late Majeſty. An Act to oblige Jews to maintain and provide for their Proteſtant Children. An Act for the Relief of the Proteſtant Purchaſers of the forfeited Eſtates in Ireland. An Act for enlarging the Time for taking the Oath of* * *Abjuration*, &c.

Her Majeſty then put an end to the Seſſion with the following Speech.

Queen's Speech in Parliament.

'My Lords and Gentlemen,

'I cannot conclude this Seſſion without repeating my hearty 'Thanks to you all, for your great Care of the Public, 'and the many Marks you have given of your Duty and 'Affection to me.

'And I muſt thank you, Gentlemen of the Houſe of 'Commons, in particular, both for the Supplies you have 'given to ſupport me in this neceſſary War, and the Pro- 'viſions you have made for the Debts contracted in the for- 'mer: Your great Juſtice in making good thoſe Deficien- 'cies will be a laſting Honour and Credit to the Nation: 'I wiſh the difficulties, they have brought upon us, may 'be a warning to prevent ſuch Inconveniencies for the 'future.

'I muſt recommend to you all, in your ſeveral Counties, 'the Preſervation of the Public Peace, and a due Execution 'of the Laws. 'I

In the ſaid Act was the following Clauſe.

* *That if any Perſon or Perſons, at any time after the firſt Day of March* 1702, *ſhall endeavour to deprive or hinder any Perſon who ſhall be the next in Succeſſion to the Crown for the time being, according to the Limitations in an Act entitled,* An Act for declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown; and according to one other Act, entitled, An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject, *from ſucceeding after the Deceaſe of her Majeſty to the Imperial Crown of this Realm, and the Dominions and Territories thereunto belonging, according to the Limitations in the beforemention'd Acts; that is to ſay, ſuch Iſſue of her Majeſty's Body, as ſhall from time to time be next in Succeſſion to the Crown, if it ſhall pleaſe God Almighty to bleſs her Majeſty with Iſſue; and during the time her Majeſty ſhall have no Iſſue, the Princeſs Sophia, Electoreſs and Ducheſs Dowager of Hanover, and after the Deceaſe of the ſaid Princeſs Sophia, the next in Succeſſion to the Crown for the time being, according to the Limitation of the ſaid Acts; and the ſame maliciouſly, adviſedly and directly, ſhall attempt by any Overt-Act or Deed; every ſuch Offence ſhall be adjudg'd High Treaſon, and the Offender or Offenders therein, their Aſſeſſors, Procurers, and Comforters, knowing the ſaid Offence to be done, being thereof convicted or attainted according to the Laws and Statutes of this Realm, ſhall be deemed and adjudged Traytors, and ſhall ſuffer Pains of Death, and all Loſſes and Forfeitures as in Caſes of High Treaſon.*

'I ſhall always wiſh that no differences of Opinion among 'thoſe that are equally affected to my Service may be the 'Occaſion of Heats and Animoſities among themſelves. I 'ſhall be very careful to preſerve and maintain the Act of 'Toleration, and to ſet the minds of all my People at quiet; 'my own Principles muſt always keep me entirely firm to 'the Intereſts and Religion of the Church of England, and 'will incline me to countenance thoſe who have the trueſt 'Zeal to ſupport it.' Anno 1 Ann. 1702.

And then the Lord-Keeper, by her Majeſty's Command, prorogued the Parliament till the ſeventh Day of July next. It was afterwards diſſolv'd.

A new Parliament being met the 20th of October, and the Commons having choſen Robert Harley, Eſq; for their Speaker; the Queen made the following Speech to both Houſes First Parliament of Queen Anne.

'My Lords and Gentlemen,

'IT is with great Satisfaction I meet this Parliament, 'which I have ſummoned to aſſiſt me in carrying on the 'juſt and neceſſary War, in which we are engaged; I have 'called you together as early as was conſiſtent with your 'convenience in coming out of your ſeveral Counties; and 'I aſſure myſelf of ſuch Evidences of your Affection to me, 'and of ſuch Zeal for our common Cauſe, as will not only 'give Spirit and Forwardneſs to our own Preparations, but 'ſuch Example and Encouragement to our Allies, as, by 'God's Bleſſing, cannot fail of a good effect, for the Advan-'tage of the whole Confederacy. Queen's Speech to both Houſes.

'I have met with ſo many Expreſſions of Joy and Satis-'faction in all the Counties, through which I have had Oc-'caſion to paſs, that I cannot but look upon them as true 'meaſures of the Duty and Affection of all my Subjects.

'Gentlemen of the Houſe of Commons, I muſt deſire you 'to grant me ſuch Supplies, as will enable me to comply 'with our particular Treaties and Engagements already made, 'and ſuch others as may be neceſſary for the Encourage-'ment of our Allies, and the proſecuting the War, where 'it ſhall moſt ſenſibly affect our Enemies, and be moſt 'effectual for diſappointing the boundleſs Ambition of 'France.

'And that my Subjects may the more chearfully bear 'the neceſſary Taxes, I deſire you to inſpect the Accounts, 'of the Public Receipts and Payments; and if there have 'been any Abuſes or Miſmanagements, I hope you will de-'tect them, that the Offenders may be puniſhed, and others 'be deterred by ſuch like Examples from the like Practices.

Anno 1 Ann. 1702.

gave the Royal Aſſent to theſe following, *viz. An Act for continuing in Priſon* ——— *Counter, and others, concern'd in the horrid Conſpiracy againſt his late Majeſty. An Act to oblige Jews to maintain and provide for their Proteſtant Children. An Act for the Relief of the Proteſtant Purchaſers of the forfeited Eſtates in Ireland. An Act for enlarging the Time for taking the Oath of* * *Abjuration*, &c.

Her Majeſty then put an end to the Seſſion with the following Speech.

Queen's Speech in Parliament.

' My Lords and Gentlemen,

' I cannot conclude this Seſſion without repeating my hearty ' Thanks to you all, for your great Care of the Public, ' and the many Marks you have given of your Duty and ' Affection to me.

' And I muſt thank you, Gentlemen of the Houſe of ' Commons, in particular, both for the Supplies you have ' given to ſupport me in this neceſſary War, and the Pro- ' viſions you have made for the Debts contracted in the for- ' mer: Your great Juſtice in making good thoſe Deficien- ' cies will be a laſting Honour and Credit to the Nation: ' I wiſh the difficulties, they have brought upon us, may ' be a warning to prevent ſuch Inconveniencies for the ' future.

' I muſt recommend to you all, in your ſeveral Counties, ' the Preſervation of the Public Peace, and a due Execution ' of the Laws. ' I

In the ſaid Act was the following Clauſe.

* *That if any Perſon or Perſons, at any time after the firſt Day of March* 1702, *ſhall endeavour to deprive or hinder any Perſon who ſhall be the next in Succeſſion to the Crown for the time being, according to the Limitations in an Act entitled,* An Act for declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown; and according to one other Act, entitled, An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject, *from ſucceeding after the Deceaſe of her Majeſty to the Imperial Crown of this Realm, and the Dominions and Territories thereunto belonging, according to the Limitations in the beforemention'd Acts; that is to ſay, ſuch Iſſue of her Majeſty's Body, as ſhall from time to time be next in Succeſſion to the Crown, if it ſhall pleaſe God Almighty to bleſs her Majeſty with Iſſue; and during the time her Majeſty ſhall have no Iſſue, the Princeſs Sophia, Electoreſs and Ducheſs Dowager of Hanover, and after the Deceaſe of the ſaid Princeſs Sophia, the next in Succeſſion to the Crown for the time being, according to the Limitation of the ſaid Acts; and the ſame maliciouſly, adviſedly and directly, ſhall attempt by any Overt-Act or Deed; every ſuch Offence ſhall be adjudg'd High Treaſon, and the Offender or Offenders therein, their Aſſeſſors, Procurers, and Comforters, knowing the ſaid Offence to be done, being thereof convicted or attainted according to the Laws and Statutes of this Realm, ſhall be deemed and adjudged Traytors, and ſhall ſuffer Pains of Death, and all Loſſes and Forfeitures as in Caſes of High Treaſon.*

Anno 1 Ann. 1702.

'I shall always wish that no differences of Opinion among 'those that are equally affected to my Service may be the 'Occasion of Heats and Animosities among themselves. I 'shall be very careful to preserve and maintain the Act of 'Toleration, and to set the minds of all my People at quiet; 'my own Principles must always keep me entirely firm to 'the Interests and Religion of the Church of England, and 'will incline me to countenance those who have the truest 'Zeal to support it.'

And then the Lord-Keeper, by her Majesty's Command, prorogued the Parliament till the seventh Day of July next. It was afterwards dissolv'd.

First Parliament of Queen Anne.

A new Parliament being met the 20th of October, and the Commons having chosen Robert Harley, Esq; for their Speaker; the Queen made the following Speech to both Houses

'My Lords and Gentlemen,

Queen's Speech to both Houses.

'IT is with great Satisfaction I meet this Parliament, 'which I have summoned to assist me in carrying on the 'just and necessary War, in which we are engaged; I have 'called you together as early as was consistent with your 'convenience in coming out of your several Counties; and 'I assure myself of such Evidences of your Affection to me, 'and of such Zeal for our common Cause, as will not only 'give Spirit and Forwardness to our own Preparations, but 'such Example and Encouragement to our Allies, as, by 'God's Blessing, cannot fail of a good effect, for the Advan-'tage of the whole Confederacy.

'I have met with so many Expressions of Joy and Satis-'faction in all the Counties, through which I have had Oc-'casion to pass, that I cannot but look upon them as true 'measures of the Duty and Affection of all my Subjects.

'Gentlemen of the House of Commons, I must desire you 'to grant me such Supplies, as will enable me to comply 'with our particular Treaties and Engagements already made, 'and such others as may be necessary for the Encourage-'ment of our Allies, and the prosecuting the War, where 'it shall most sensibly affect our Enemies, and be most 'effectual for disappointing the boundless Ambition of 'France.

'And that my Subjects may the more chearfully bear 'the necessary Taxes, I desire you to inspect the Accounts, 'of the Public Receipts and Payments; and if there have 'been any Abuses or Mismanagements, I hope you will de-'tect them, that the Offenders may be punished, and others 'be deterred by such like Examples from the like Practices.

Anno 1 Ann. 1702.

'I must observe to you with some Concern, that the 'Funds given by the last Parliament have in some measure 'fallen short of the Sums proposed to be raised by them; 'and tho' I have already paid and applied to the Public 'Service the hundred thousand Pounds, which I promised 'to the last Parliament, yet it has not supplied that De-'ficiency.

'My Lords and Gentlemen, I cannot without much 'trouble take notice to you of the disappointment we have 'had at Cadiz: I have not yet had a particular Account of 'that Enterprize, nor of all the difficulties our Forces have 'met with there; but I have have had such a Representa-'tion of Disorders and Abuses committed at Port St. Mary's, 'as hath obliged me to give directions for the strictest Exa-'mination of that matter.

'I am earnestly desirous, for all our sakes, that this may 'prove a short Session; however, I hope you will find time 'to consider of some better and more effectual Method to 'prevent the Exportation of Wool, and to improve that 'Manufacture, which is of great Consequence to the whole 'Kingdom: on my part nothing shall be omitted for its 'Encouragement.

'I am firmly persuaded, that the Love and good Affection 'of my Subjects is the surest Pledge of their Duty and Obe-'dience and the truest and justest Support of the Throne; 'and as I am resolved to defend and maintain the Church 'as by Law established, and to protect you in the full En-'joyment of all your Rights and Liberties, so I rely upon 'your Care of me; my Interests and your's are inseparable; 'and my Endeavours shall never be wanting to make you all 'Safe and Happy.'

This Speech having been read and reported to the House, they soon after agreed on the following Address.

The Commons Address.

'Most gracious Sovereign, We your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do beg leave to lay before your Majesty our most humble and hearty Thanks for your most gracious Speech from the Throne, which gives us such Instances of your Majesty's tender Concern for your People, and of your entire Confidence in their Affections, as must engage them to make your Majesty the utmost Returns of Duty and Gratitude.

'It is great Condescension in your Majesty to take notice, in so public a manner, of the Expressions of Joy and Satisfaction, with which your Majesty was received in all the Counties through which you had Occasion lately to pass. All your Subjects have already received so many Benefits under the Influence of your Majesty's happy Government, that

that your Majeſty muſt have met with the like, in any other part of your Dominions that you had honoured with your royal Preſence. Anno 1 Ann. 1702.

'The late diſappointment at Cadiz does the more affect us, becauſe it gives your Majeſty ſo much trouble; but this Misfortune cannot make us forget, that the Protection and Security of our Trade, the vigorous Support of your Majeſty's Allies, and the wonderful Progreſs of your Majeſty's Arms under the Conduct of the Earl of Malborough, have ſignally * retrieved the Antient Honour and Glory of the Engliſh Nation.

'After your Majeſty's repeated Aſſurances, we neither doubt of the full Enjoyment of all our Rights and Liberties, nor of your Majeſty's defending and maintaining the Church as by Law eſtabliſhed; your Majeſty has been always a moſt illuſtrious Ornament to this Church, and have been expoſed to great hazards for it; and therefore we promiſe ourſelves, that in your Majeſty's Reign, we ſhall ſee it perfectly reſtored to its due Rights and Privileges, and ſecured in the ſame to Poſterity; which is only to be done by diveſting thoſe Men of the Power who have ſhewn they want not the Will to deſtroy it.

'The Proſpect of theſe Bleſſings, and your Majeſty's deſire to have the Accounts of the Public Receipts and Payments inſpected, and to have any Abuſes and Miſmanagements thereof puniſhed, will very much endear your Majeſty to your People; and encourage us moſt chearfully to aſſiſt your Majeſty with thoſe Supplies that may effectually enable your Majeſty to make good ſuch Alliances, as ſhall be neceſſary to proſecute the War where it ſhall moſt ſenſibly affect your Enemies, and thereby diſappoint the boundleſs Ambition of France.

'Your Majeſty may ſafely rely upon the Care of your faithful Commons: The value you are pleaſed to ſet upon the Love and Affection of your Subjects, is the higheſt Obligation that can be laid on them, to give your Majeſty pledges thereof in their Duty and Obedience. They are and ſhall always be ſenſible, that your Majeſty's Intereſt and their's are inſeparable; and as they gratefully acknowledge your Majeſty's great Deſigns to make them ſafe and happy, ſo their Prayers and ſincereſt Endeavours ſhall never be wanting to make your Majeſty's Reign more proſperous and more glorious than any of your Majeſty's Royal Predeceſſors.'

To

* *When the Addreſs was reported, the Word* maintained *was offered as an Amendment inſtead of* retrieved: *But after a vehement Debate, a Motion being made that the Word* retrieved *do ſtand as Part of the Addreſs, it was carried in the Affirmative, Yeas* 180. *Noes* 80.

Anno 1 Ann. 1702.

To which, as the Speaker ſignified to the Houſe, her Majeſty at the ſame time, returned her Anſwer, as follows:

Queen's Anſwer.

'Gentlemen, I thank you very kindly for the many 'Marks of your Duty and Affection expreſſed in this Ad-'dreſs.

'Nothing can be a greater Satisfaction to me than an entire Confidence between me and my Subjects.'

Sir John Packington's Complaint againſt the Biſhop of Worceſter.

November 18, Sir John Packington exhibited a Complaint againſt the Biſhop of Worceſter, and Mr. Lloyd his Son, which he reduced to the following Heads.

I. 'That ſoon after the laſt Parliament roſe, the Biſhop of Worceſter took upon him to ſend to me to deſiſt from ſtanding to be elected Knight for that County, and to threaten me, that if I would not deſiſt, he ſhould think himſelf obliged to ſpeak againſt me to his Clergy.

II. 'He ſent ſome Letters himſelf, and his Secretary ſent others, to ſeveral of his Clergy, with Directions to make what Intereſt they could againſt me in their ſeveral Pariſhes, and where they could not prevail with ſuch who voted ſingly for me in the laſt Election, to give a Vote for one or both the other Candidates, they ſhould deſire them to ſtay at home; and in order to this, his Lordſhip ſent them Copies of the Poll of their reſpective Pariſhes.

III. 'He aſperſed me to his Clergy, branding me and my Anceſtors with ſeveral Vices; and at his Confirmation and Viſitations ſollicited his Clergy to vote againſt me, repreſenting me as very unfit to ſerve in Parliament, and threatning them with his Diſpleaſure, if they did not vote againſt me.

IV. 'He aſperſed me and my Anceſtors to ſeveral of the Laity, who were his Tenants, and threatned them, that if they would not vote againſt me, they ſhould never renew any Eſtate under him, and that he would ſet ſuch Marks upon them, that his Succeſſors ſhould not ſuffer them nor their Children to renew any more.

V. 'Mr. Lloyd, the Biſhop's Son, aſperſed me, and gave ſcandalous Characters of me to ſeveral Freeholders, whom he ſollicited to vote againſt me, and told them I voted for bringing in a French Government.

VI. 'The Biſhop's Secretary aſperſed me to ſeveral Freeholders in the like manner, repreſenting me as unfit to ſit in the Houſe, threatning them with the Biſhop's Diſpleaſure; and ſaid, They might as well vote for the Prince of Wales as for me.'

All theſe Particulars were ſupported by Evidence at the Bar of the Houſe, and by the following Letters under the Biſhop's own Hand.

Hartlebury,

Anno 1 Ann, 1702.

Hartlebury, July 29, 1702,

'SIR,

'I Think I have more Reaſon to hope for ſomething of Conſideration from you, than from moſt others of the Clergy of this Dioceſe, and ſomething alſo more from the Freeholders in your Pariſh, than in moſt other Parts of the County; and therefore I thought I had reaſon to take it ill of your Neighbours, that they ſhould give their Votes as they did, for the chuſing of Sir J. Packington to be Knight of the Shire, when, in order to that very Election, he had publiſh'd two Libels, full of horrible Lyes, againſt myſelf, and ſeveral others of the Biſhops, that had never given him the leaſt Provocation. This grieved me much, but yet I had wherewith to comfort myſelf, in believing that thoſe Libels might not have come to their Knowledge; tho' as I ſince underſtand great Care was taken by Sir John's Agents to publiſh them all over your Neighbourhood. But now ſince, I underſtand there is a third Libel come abroad, which is written againſt me in particular. The declar'd Cauſe of it is not only my oppoſing Sir J. P's Election, which, after my coming into the Country, and finding his Libels publiſh'd among my Tenants by his Servants, I ſent him word I thought myſelf obliged to do, unleſs he would be pleaſed to deſiſt from ſtanding, as I earneſtly deſired him to do more than once: But this Author hath found, that I was the Writer of a Printed Half-Sheet, called *The Character of a Churchman*, and that this was written againſt Sir J. P. for hindering his Election; and for this he ſcourges me moſt unmercifully, with ſuch a Tongue, as that St. James deſcribes. For that *Character of a Churchman*, I do declare to you in the Preſence of God, That I neither writ it nor know the Author of it; but I certainly know, That Sir J. P. is not once mention'd in it, nor had I at the time when that was printed any Breach with Sir J. P. nor Occaſion to do this with reſpect to the Election, for it was printed before I came to London, and that was before the Diſſolution of the former Parliament, which if I had foreſeen, I had certainly ſtaid longer in the Country. After all this, it is true that I ſent a great number of thoſe Half-Sheets into the Country, as I did of ſuch other ſmall Things, upon ſeveral Accounts. They were ſent chiefly on the Account of our unhappy Differences in Convocation, and for promoting the moſt pious Deſigns of Reformation. On this laſt Account it was that I ſent this *Character of a Churchman*, without making any Reflection upon any particular Perſon. I did indeed know, that the Devil would be mad at me for it, and now I have found the Effects of his Wrath: He hath ſet a Son of his to write againſt me, which I thank God is the worſt he can do. This

Account

Anno 1 Ann. 1702.

Account I have given you of this third Libel, in hopes it may have ſome Effect upon you and your Neighbour Mr. Hodge, to whom I deſire you to ſhew what I have written. I hope you will both of you conſider, whether any ſuch Promiſe as that you have made to that Gentleman, to make him your Repreſentative in Parliament, can oblige you to any thing elſe but Repentance of your having made ſuch a Promiſe, and to bring forth Fruits meet for Repentance. For my part, I leave this upon your Souls, deſiring you both to do in this Matter as you think you can beſt anſwer it to God at the great Day, which I doubt not you believe, and expect as well as I. I pray God direct you. I am,

Your Faithful Friend, and Dioceſan,

W. Worceſter.

'SIR, July 27, 1702.

'YOU cannot but have heard, and probably have ſeen how the Biſhops of this Church in general, and 5 or 6 of them in particular, have been abuſed with impudent Lyes in two Libels that were publiſhed by Sir John Packington almoſt a Year ſince, in order to his laſt Election. At that time I had not given him the leaſt Provocation; and for the other abuſed Biſhops, few of them knew his Face. Since that time, finding at my Return from London, where I was all the while, he was libelling me in the Country, that he had publiſhed theſe Libels, ſome of them with his own Hands, and the reſt by his Agents, I could not but think myſelf obliged by all honeſt ways to oppoſe his Election, if he would ſtand; which I ſent to him 3 times to let him know, and to deſire he would forbear.

'Hereupon there comes out a third Libel againſt me, which I have only ſeen, but could not get a Copy of it. I never ſaw any thing wrote with ſuch a furious Rage of railing, and ſcoffing, and lying; which, I thank God, can do me no hurt, nor will it do him Service, if I may ſo call it, in promoting his Election, which I think would be the greateſt hurt that could happen to him.

'It is for the preventing of this that I writ to my Friends, earneſtly to deſire them to get what Votes they can for Mr. Bromley and Mr. Walſh; and to keep away as many as they can of them that will vote for Sir John Packington.

'Your Diligence in this Matter will lay a very great Obligation upon, Sir,

Your faithful Friend, and Dioceſan,

W. Worceſter.

Upon a full Hearing of the whole Matter, the Houſe came to the following Reſolutions:

Reſolved,

Reſolved Nemine Contradicente, That Sir John Pakington has by Evidence fully made out the Charge which he exhibited againſt the Lord Biſhop of Worceſter. Anno 1 Annæ 1702.

Reſolved Nemine Contradicente, That Sir John Pakington has by Evidence fully made out the Charge againſt Mr. Lloyd, the ſaid Lord Biſhop's Son.

Reſolved, That it appears to this Houſe, That the Proceedings of William Lord Biſhop of Worceſter, his Son, and his Agents, in order to the hindering the Election of a Member for the County of Worceſter, has been malicious, unchriſtian, and arbitrary, in high Violation of the Liberties and Privileges of the Commons of England.

Reſolved, That an humble Addreſs be preſented to her Majeſty, That ſhe will be graciouſly pleaſed to remove William Lord Biſhop of Worceſter from being Lord Almoner to her Majeſty.

Ordered, That the ſaid Reſolution and Addreſs be preſented to her Majeſty by ſuch Members of this Houſe as are of her Majeſty's moſt Honourable Privy-Council.

Ordered, That the further Conſideration of the Matter relating to the Lord Biſhop of Worceſter, be adjourned till this day ſevenight.

Ordered, That Mr. Attorney-General do proſecute Mr. Lloyd, the Lord Biſhop of Worceſter's Son, for the ſaid Offences, after his Privilege as a Member of the Lower Houſe of Convocation is out.

Novemb. 20, Mr. Comptroller reported to the Houſe, That their Reſolution and Addreſs to her Majeſty for the removing William Lord Biſhop of Worceſter, from being Lord Almoner to her Majeſty, had been preſented to her Majeſty; and that her Majeſty was pleaſed to give this moſt gracious Anſwer.

'I am very ſorry that there is Occaſion for this Addreſs 'againſt the Biſhop of Worceſter: I ſhall order and di-'rect, that he ſhall no longer continue to ſupply the Place 'of Almoner, but I will put another in his room to perform 'that Office.'

Reſolved, That the moſt humble Thanks of this Houſe be returned to her Majeſty, for her Majeſty's moſt gracious Anſwer to their Addreſs relating to William Lord Biſhop of Worceſter.

Ordered, That Mr. Comptroller of her Majeſty's Houſhold, do return the ſaid moſt humble Thanks of this Houſe to her Majeſty.

On the 21ſt, the Speaker acquainted the Houſe, that there had been with him that Morning, the Prolocutor of the lower Houſe of Convocation, and alſo the Dean of Canterbury,

Anno 1 Ann. 1702.

Arch-Deacon Ottley, and Mr. Moor, and had brought him the following Order:

An Order of the lower Houſe of Convocation.

Novemb. 20. *Ordered*, 'That the Prolocutor, the Dean of Canterbury, Arch-Deacon Ottley, and Mr. Moor, do attend Mr. Speaker of the honourable Houſe of Commons, and return our moſt humble Thanks to him, and to that honourable Houſe, for the great Favour to the Church and Convocation, which they had on all Occaſions been pleaſed to expreſs; and particularly for that late Regard which they of themſelves, without Suggeſtion, were pleaſed to have to the Privilege of this Houſe, in the Caſe of one of our Members, who had the Misfortune to fall under their Diſpleaſure.'

Upon this, the Houſe paſſed a Reſolution, that they would, upon all Occaſions, aſſert the juſt Rights of the lower Houſe of Convocation.

On the 10th of December the following Meſſage was brought to the Houſe by Mr. Secretary Hedges, ſigned by the Queen herſelf.

'ANNE R.

Queen's Meſſage relating to the Earl of Marlborough.

'The Earl of Marlborough's Services to her Majeſty, and 'to the Public, have been ſo eminent, both in his Command 'of the Army, and in his having eſtabliſhed an entire Con- 'fidence and good Correſpondence between her Majeſty and 'the States-General, that ſhe has thought fit to grant the 'Title of a Duke of this Kingdom to him, and to the Heirs 'male of his Body, and alſo a Penſion of 5000l. *per Annum*, 'upon the Revenue of the Poſt-Office, for the Support of 'this Honour, during her Majeſty's natural Life. If it had 'been in her Majeſty's power, ſhe would have granted the 'ſame term in the Penſion as in the Honour; and ſhe hopes 'you will think it ſo reaſonable in this Caſe, as to find ſome 'proper Methods of doing it.'

The Commons, after the reading of the Meſſage, ſeemed for ſome time to be in a maze, and kept ſo long ſilent, that (it was ſaid) the Speaker ſtood up, and looked round, to ſee if any body would ſpeak to it: And at length Mr. S——— having broke the Ice, the Debate ran very high upon the Occaſion; and amongſt others, common Fame gave out, that an old Member ſhould ſay, 'That though he had accepted of an Employment at Court, yet, he never did it with a Deſign that his Mouth ſhould be ſewed up in that Houſe, when any thing was offered that he thought detrimental to his Country.' And the Houſe at length having wiſely weighed this important Affair, inſtead of complying with the Meſſage, on the 21ſt, preſented the following Addreſs to her Majeſty in relation to it.

Commons Addreſs thereon.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects the Commons in Parliament aſſembled, humbly

humbly beg leave to declare our unanimous Satisfaction in the juſt Eſteem your Majeſty has been pleaſed to expreſs of the eminent Services performed by the Duke of Marlborough, who has not only, by his Conduct of the Army, retrieved the ancient Honour and Glory of the Engliſh Nation, but by his Negotiation eſtabliſhed an entire Confidence and good Correſpondence between your Majeſty, and the States-General, and therein vindicated the Gentlemen of England, who had, by the vile Practices of deſigning Men, been traduced, and induſtriouſly repreſented as falſe to your Majeſty's Allies, becauſe they were true to the Intereſt of their Country. Anno 1 Annæ 1702.

'It is to their unexpreſſible Grief, that your Majeſty's moſt dutiful Commons find any Inſtances, where they are unable to comply with what your Majeſty propoſes to them; but they beg leave humbly to lay before your Majeſty the Apprehenſions they have of making a Precedent for the future Alienations of the Revenue of the Crown, which has been ſo much reduced by the exorbitant Grants of the laſt Reign, and which has been ſo lately ſettled and ſecured by your Majeſty's unparallel'd Grace and Goodneſs.

'We are infinitely pleaſed to obſerve by your Majeſty's late gracious Acceptance of the Duke of Marlborough's Services, that the only way to obtain your Majeſty's Favour, is to deſerve well from the Public; and we beg leave to aſſure your Majeſty, that whenever you ſhall think fit to reward ſuch Merit, it will be to the entire Satisfaction of your People.'

To which her Majeſty returned the following Anſwer:

'I ſhall always think myſelf much concerned to reward 'thoſe who deſerve well of me, and of the Public: On this 'account, I beſtowed ſome Favours on the Duke of 'Marlborough, and I am glad to find you think they are 'well placed.' Queen's Anſwer.

There had been a Bill brought in early this Seſſion by the Commons, for preventing Occaſional Conformity; and though there was a good deal of Oppoſition made to the Bill by ſome Gentlemen of that Houſe, yet it was carried there by a great Majority; and on the 2d of December, ſent to the Lords for their Concurrence. The Lords were ſo little fond of this Bill, that apprehending it, or ſome other Bill they did not wholly like, might one time or other be tacked to a Money-Bill by the Commons, they paſſed a Vote, That it would be an Infringement of the Privilege of their Houſe. When the Bill came to be conſidered by the Lords, they were pleaſed to make ſeveral Amendments to it, which occaſioned ſeveral Conferences between the two Houſes; as follow after the Bill, which it is thought expedient to annex, as neceſſary for the right underſtanding the Matter in queſtion. The Controverſy between the two Houſes relating to the Bill of Occaſional Conformity.

The ACT *for preventing*

Occaſional Conformity.

The BILL and AMENDMENTS.

The Commons Agreement and Diſagreement, to the Amendments made by the Lords to the Bill for Preventing Occaſional Conformity, with the Commons Amendments to the Lords Amendments.

The Amendments made by the Lords to the Bill for preventing Occaſional Conformity.

Decemb. 2, 1702.

As nothing is more contrary to the Profeſſion of the Chriſtian Religion, and particularly to the Doctrine of the Church of England, than Perſecution for Conſcience only; in due conſideration whereof, an Act paſſed in the firſt Year of the Reign of the late King William and Queen Mary, intitled, *An Act for exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of England, from the Penalties of certain Laws*; which Act ought inviolably to be obſerved, and Eaſe given to all Conſciences truly ſcrupulous; nevertheleſs, whereas the Laws do provide that every Perſon to be admitted into any Office or Employment ſhould be conformable to the Church, as it is by Law eſtabliſhed, by enacting, that every ſuch Perſon, ſo to be admitted, ſhould receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of England; yet ſeveral Perſons diſſenting from the Church, as it is by Law eſtabliſhed, do join with the Members

Agreed to by the Commons.

Line 9. After [*Mary*] add [*of glorious Memory*]

Diſagreed to by the Commons.

l. 16. After [*Scrupulous*] add [*but*]

Diſagreed to by the Commons.

l. 17. Leave out from [*whereas*] to [*ſeveral*] in the 27th line.

thereof

thereof in receiving the Sacrament of the Lords Supper, to qualify themſelves to have and enjoy ſuch Offices and Employments, and do afterwards reſort to Conventicles or Meetings for the exerciſe of Religion in other manner than according to the Liturgy and Practice of the Church of England, which is contrary to the Intent and Meaning of the Laws already made: Be it therefore enacted by the Queen's moſt excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, and by Authority of the ſame, that if any Perſon or Perſons after the firſt Day of March, which ſhall be in the Year of our Lord, one thouſand ſeven hundred and two, either Peers or Commoners, who have or ſhall have any Office or Offices, civil or military, or receive any Pay, Salary, Fee, or Wages, by reaſon of any Patent or Grant from her Majeſty, or ſhall have any Command or Place of Truſt from or under her Majeſty, or from any of her Majeſty's Predeceſſors, or by her or their Authority, or by Authority derived from her or them, within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, or in her Majeſty's Navy, or in the ſeveral Iſlands of Jerſey and Guernſey, or ſhall be admitted into any Service or Employment in her Majeſty's Houſhold or Family; or if any Mayor, Alderman, Recorder, Bayliff, Town Clerk, Common-Council-Man, or other Perſon bearing any Office of Magiſtracy or Place of Truſt, or other Employment relating to or concerning the Government of the reſpective

Diſagreed to by the Commons.

l. 3. Leave out [*ſuch*];

Diſagreed to by the Commons.

l. 41. leave out from [*Family*] to [*ſhall*] in the 10th line in the next page.

Cities,

Cities, Corporations, Boroughs, Cinque-Ports, and their Members, and other Port-Towns within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, who by the Laws are obliged to receive the Sacrament of the Lord's-Supper, according to the Rites and Uſage of the Church of England, ſhall at any time after their Admiſſion into their reſpective Offices or Employments, or after having ſuch Grant, as aforeſaid, during his or their Continuance in ſuch Office or Offices, Employment or Employments, or the Enjoyment of any Profit or Advantage from the ſame, ſhall reſort to or be preſent at any Conventicle, Aſſembly or Meeting, under Colour or Pretence of any Exerciſe of Religion, in other Manner than according to the Liturgy and Practice of the Church of England, in any Place within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, at which Conventicle, Aſſembly or Meeting, there ſhall be five Perſons or more aſſembled together, over and beſides thoſe of the ſame Houſhold, if it be in any Houſe where there is a Family inhabiting, or if it be in an Houſe or Place where there is no Family inhabiting, then where any five Perſons or more are ſo aſſembled, as aforeſaid, ſhall forfeit the Sum of one

Agreed to by the Com.

l. 17. Leave out [*ſhall*] and read [*knowingly and willingly*]

Agreed to by the Commons with the Amendments following, *viz.*

1. After the word [*or*] add [*ſhall knowingly and willingly be preſent.*]

After the word [*any*] add [*ſuch*].

After the word [*Meeting*] leave out [*where*] and inſert [*in ſuch Houſe or Place, as aforeſaid, although*]

After [*Liturgy*] leave out [*is*] and inſert [*be there*]

After [*uſed*] leave out [*and where*] and inſert [*in caſe*]

l. 38. After [*aforeſaid*] add [*or at any Meeting where her Liturgy is uſed, and where her Majeſty and the Princeſs* Sophia *ſhall not be prayed for in expreſs Words, according to the Liturgy of the Church of* England.]

1. To which Amendments of the Commons (to the Lords Amendment) as entered on the other ſide, the Lords agreed, with the Addition following:

2. After the words [*prayed for*] in the Commons Amendment, add [*in purſuance*

Disagreed to by the Commons.

hundred Pounds, and five Pounds for every day, that any such Person or Persons shall continue in the Execution of such Office or Employment, after he or they shall have resorted to or been present at any such Conventicle, Assembly or Meeting as aforesaid, to be recovered by him or them that shall sue for the same, by any Action of Debt, Bill, Plaint or Information; in any of her Majesty's Courts at Westminster, wherein no Essoign, Protection or Wager of Law shall be allowed, and no more than one Imparlance.

L. 1. Leave out [*One hundred Pounds, and five Pounds for every Day that such Person or Persons shall continue in the Execution of such Office or Employment*] and instead thereof insert [*twenty Pounds, to be divided into three Parts, whereof one third Part to the Queen, one other to the Poor of the Parish where the Offence shall be committed, and one third Part to the Informer.*]

And be it further enacted, that every Person convicted in any Action to be brought, as aforesaid, or upon any Information, Presentment or Indictment in any of her Majesty's Courts at Westminster, or at the Assizes, shall be disabled from thenceforth to hold such Office or Offices, Employment or Employments, or to receive any Profit or Advantage by reason of them, or of any Grant, as aforesaid, and shall be adjudged incapable to bear any Office or Employment whatsoever, within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed.

Line 28. leave out from [*aforesaid*] to the End of the Bill.

And add the Clauses A, B, C, D, E.

Disagreed to by the Commons.

Clause [*A*] agreed to by the Commons.

Provided always, and be it farther enacted by the Authority aforsaid, that if any Person or Persons who shall have been convicted, as aforesaid, and thereby made

[A] *Provided, that no Person shall suffer any Punishment for any Offence committed against this Act, unless Oath be made of such Offence before some Judge or Justice of the Peace (who is hereby empowered and required to take the said Oath) within ten Days after the said Offence committed, and unless the said*

After [*Majesty*] add [*whom God long preserve,* Catherine *the Queen Dowager*]

After [*Sophia*] add [*or such others as shall from time to time be lawfully appointed to be prayed for*]

After [*be*] add [*there*]

2. To which Addition of the Lords (to the Amendments made by the Commons to the Lords Amendment) as entred on the other side, the Commons agreed.

pursuance of an Act passed in the first Year of King William *and Queen* Mary, *intitled,* An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; *and the Act passed in the twelfth and thirteenth of King* William *the Third, intitled,* An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.]

inca-

incapable to hold any Office or Employment, ſhall, after ſuch Conviction, conform to the Church of *England* for the Space of one Year, without having been preſent at any Conventicle, Aſſembly or Meeting, as aforeſaid, and receive the Sacrament of the Lord's Supper at leaſt three times in the Year; every ſuch Perſon or Perſons ſhall be capable of a Grant of any Office or Employment, or of being elected into or holding of any the Offices or Employments aforeſaid.

Clauſe [*B*] diſagreed to by the Commons.

Provided alſo, and be it enacted, that every Perſon ſo convicted, and afterwards conforming in Manner, as aforeſaid, ſhall at the next Term after his Admiſſion into any ſuch Office or Employment, make Oath in Writing, in any of her Majeſty's Courts at Weſtminſter, in public and open Court, between the Hours of nine of the Clock and twelve in the Forenoon, or at the next Quarter-Seſſions for that County or Place where he ſhall reſide, that he has conformed to the Church of England for the Space of one Year before ſuch his Admiſſion, without having been preſent at any Conventicle, Aſſembly or Meeting, as aforeſaid, and that he has received the Sacrament of the Lord's Supper at leaſt three times in the Year, which Oath ſhall be there enrolled and kept upon record.

Clauſe [*C*] diſagreed to by the Commons.

Provided alſo, and be it further enacted by the Authority aforeſaid, that if any Perſon after ſuch his Admiſſion, as aforeſaid, into any Office or Employment, ſhall a ſecond time offend, in manner aforeſaid, and ſhall be thereof lawfully convicted, he ſhall for ſuch Offence incur double the Penalties before-

Clauſe [*D*] diſagreed to by the Commons.

Offender be proſecuted for the ſame within 3 Months after the ſaid Offence committed; nor ſhall any Perſon be convicted for any ſuch Offence, unleſs upon the Oath of two credible Witneſſes at the leaſt.

[B] *Provided, always, and be it enacted, that from and after the ſaid firſt day of* March, *no Proteſtant Diſſenter ſhall be compelled or compellable to take, ſerve, hold or bear any Office or Place whatſoever, for the taking, ſerving or holding whereof he cannot be duly qualify'd by Law, without receiving the Holy Sacrament according to the Uſage of the Church of* England, *and alſo making and ſubſcribing the Declaration mentioned in the Statute, made* 25 Car. 2. *entitled,* An Act for preventing Dangers which may happen from Popiſh Recuſants, *any Statute, Law, Uſage, or other thing to the contrary notwithſtanding.*

[C] *Provided nevertheleſs, that this Act ſhall not extend to the Univerſity Churches in the Univerſities of this Realm, or either of them, when, or at ſuch times as any Sermon or Lecture is preached or read in the ſame Churches, or any of them, for, or as the public Univerſity Sermon or Lecture, but that the ſame Sermons and Lectures may be preached or read, in ſuch Sort or Manner, as the ſame have been heretofore preached or read; this Act, or any thing therein contained to the contrary, in any wiſe notwithſtanding.*

Clauſe [E] diſagreed to by the Commons.

mentioned, to be recovered in manner, as aforeſaid, and ſhall forfeit ſuch Office or Employment, and ſhall not be capable of having any Office or Employment, until he ſhall have conformed for the Space of three Years, in manner aforeſaid, whereof Oath ſhall be made in Writing in one of her Majeſty's Courts at Weſtminſter, or at the Quarter-Seſſions of the County where he reſides.

[D] *Provided, that no Perſon ſhall incur any the Penalties in this Act, by reſorting to, or being preſent at the religious Exerciſes uſed in the* Dutch *and* French *Languages in Churches eſtabliſhed in this Realm, in the Reigns of King* Edward *the Sixth, or of Queen* Elizabeth, *or of any other King or Queen of this Realm.*

[E] *Provided always, and be it enacted by the Authority aforeſaid, that nothing in this Act ſhall extend, or be conſtrued to extend to any Governor or Governors of any Hoſpital or Hoſpitals, or to any Aſſiſtants of any Corporation or Corporations, Work-houſe or Work-houſes, conſtituted, erected or employed for the Relief, and ſetting of the Poor on Work, and for puniſhing of Vagrants and Beggars; all which ſaid Perſons, and every of them, ſhall be, and are hereby exempted from all the Penalties mentioned in this Act, and are hereby adjudged and declared not to be ſubject or liable to any of the Penalties or Forfeitures mentioned in one Act of Parliament made in the 25th Year of the Reign of King* Charles *the Second,* For preventing Dangers which may happen from Popiſh Recuſants, *for or by reaſon of any of the aforeſaid Offices or Employments.*

December 17. The Managers appointed by the two Houſes had their firſt Conference, as follows.

First Conference.

To the firſt Amendment the Commons do agree.

To the ſecond and third Amendments, line 10, and 11, the Commons diſagree.

Firſt, becauſe that the Recital, that every Perſon to be admitted into any Office or Employment, ſhould be conformable to the Church, as it is by Law eſtabliſhed, is confined to ſuch Laws as enact, that every ſuch Perſon ſhall receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of England.

Secondly, becauſe the Corporation and the Teſt-Acts, which have been frequently evaded, and are by this Bill intended to be made effectual, do provide, that all Perſons to be admitted into any Office or Employment, in purſuance of thoſe Acts, ſhould receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of England; and all Perſons under ſuch Obligation to receive the Sacrament, the Commons conceive are obliged to be conformable to the Church, as it is by Law eſtabliſhed.

To the fourth Amendment, Line the 20th, the Commons diſagree, becauſe it depends upon the former.

To the fifth Amendment, ſecond Skin, Line the fourth, the Commons diſagree, becauſe your Lordſhips admit this

Anno 1 Ann. 1702.

Bill to be reaſonable as to the Officers and Perſons deſcribed in the former Part of this Clauſe, and the Commons ſee no Reaſon why this Bill ſhould not equally extend to the Perſons and Officers deſcribed in the latter Part thereof, left out by your Lordſhips in this Amendment.

Secondly, your Lordſhips leaving out, in this Amendment, theſe Words, (*viz.*) ['Who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of England,'] may countenance an Opinion, that the Perſons deſcribed in the Words left out by your Lordſhips, are not obliged to receive the Sacrament.

Thirdly, thoſe Words do equally refer to the Perſons deſcribed in the former Part of this Clauſe, to which your Lordſhips have agreed, as to the Perſons deſcribed in your Lordſhips Amendment, and the Commons take it to be very evident, that every Perſon deſcribed in this Clauſe, as ſent up to your Lordſhips, is obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of England.

To the ſixth Amendment, line the 20th, the Commons do agree.

To the 7th Amendment, line the 30th, the Commons have agreed, with ſome Amendments.

To the eighth Amendment, line 34, the Commons have diſagreed, becauſe (tho' many other Reaſons might be offered, from which the Commons can never depart, yet, at this time, they think it ſufficient to ſay) that the Penalties, left out by your Lordſhips in this Amendment, are reaſonable, and no more than what is neceſſary to make this Bill effectual.

To the ninth Amendment, third Skin, line the ninth, the Commons diſagree, becauſe they think the Penalty of Incapacity, as qualified by the ſubſequent Proviſoes, is a proper Puniſhment for this Offence; and the Commons conceive it neceſſary to encreaſe the Penalty upon a ſecond Offence, as has been practiſed in many other Caſes.

To Clauſe (A.) the Commons agree.

To Clauſe (B.) the Commons diſagree, becauſe, as this Bill takes away no one Privilege that the Diſſenters have by Law, ſo the Commons cannot think it fit to give them any new Privilege by it.

To Clauſe (C.) the Commons diſagree, becauſe the Commons conceive there is no Occaſion for it.

To Clauſe (D.) the Commons diſagree, becauſe the Commons think it neceſſary that the Bill ſhould equally extend to all Perſons, before recited, as obliged to receive the Sacrament, and ſee no Reaſon for the Diſtinction made thereby.

To

To Clauſe (E.) the Commons diſagree, becauſe, if ſuch Perſons are obliged to receive the Sacrament, there is no Reaſon to exempt them out of this Bill, and if they are not obliged, the Clauſe is unneceſſary. Anno 1 Ann. 1702.

To theſe Reaſons of the Commons the Lords reply'd, at a ſecond Conference, Jan. 9, as follows. 2d Conference.

The Lords inſiſt on the ſecond and third Amendment in the Preamble of the Bill.

Becauſe theſe Words left out of this Amendment are introductive to the Clauſe left out by their Lordſhips in the fifth Amendment. Beſides, as the Law now ſtands, there are many Offices and Employments, to which Perſons may be admitted, without being under an Obligation to receive the Sacrament on that account; and therefore they cannot agree to let a Clauſe ſtand, wherein a Matter of Fact is poſitively affirmed, which they take to be otherwiſe.

The Lords inſiſt on the fourth Amendment, becauſe it depends on the former.

The Lords inſiſt on their fifth Amendment, becauſe the Act of the 25th of King Charles the Second, called the Teſt-Act, which has been found by Experience to have been an effectual Security againſt Popery, (and which their Lordſhips are willing to enforce yet further by this Bill, as to the Diſſenters) is known to every body, and it is generally underſtood to what Employments it does extend; and therefore their Lordſhips think it reaſonable to reſt there, and not to ſubject Men to the Penalties of this Bill, upon general or uncertain Words.

1. The Lords do not go about to take away the Force of the Corporation Act, or to leſſen any Security the Church of England has by it, but cannot agree to extend the Penalties of this Bill, to the general Words of that Act, which, by Conſtruction hereafter, may ſerve Purpoſes which are not owned at preſent to be the Intent of this Bill.

The Lords inſiſt on their eighth Amendment, which relates to the Puniſhments as they ſtood, when the Bill was ſent up from the Houſe of Commons.

Whatevever Regard their Lordſhips may have to Reaſons which the Houſe of Commons are reſolved never to depart from, they hope it will not ſeem ſtrange, that they are not convinced by ſuch Reaſons as are not thought fit to be offered.

But, in juſtification of their Amendment, their Lordſhips think fit to ſay, that as they have an undoubted Right to begin Bills with Pecuniary Penalties, and to alter and diſtribute pecuniary Penalties in Bills ſent up to them by the Houſe of Commons (which Right their Anceſtors have always enjoyed; and from which their Lordſhips can never

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depart) ſo they are convinced there never was a more juſt Occaſion of making uſe of that Right, than in the preſent Caſe.

2. They conceive the Penalty of one hundred Pounds and five Pounds a Day for every Day after the Offence committed, to be exceſſive; and the whole being given to the Informer, would prove a dangerous Temptation to Perjury, and a pernicious Encouragement to Informers, the moſt odious ſort of Perſons, which would be a Blemiſh on the beſt Reign.

Their Lordſhips have given a ſufficient Proof of their Willingneſs, to make this Bill as effectual as will conſiſt with Reaſon, by agreeing to ſuch a pecuniary Penalty (beſides the Loſs of Office) as may be a proper Encouragement to Informers to ſwear the Truth, tho' not perhaps a ſufficient Temptation to go further.

As to the ninth Amendment, the Commons ſay they diſagree, becauſe they think Incapacity a proper Puniſhment for this Offence. The Lords inſiſt upon their Amendment, becauſe they think directly the contrary.

Their Lordſhips obſerve, that, as the Law now ſtands, any Perſon having an Office may be preſent at Maſs, upon much eaſier Terms than he might be preſent at a Conventicle, if the Lords ſhould depart from this Amendment.

3. The Lords think, that an Engliſh Man cannot be reduced to a more unhappy Condition than to be put by Law under an Incapacity of ſerving his Prince and Country, and therefore nothing but a Crime of the moſt deteſtable Nature, ought to put him under ſuch a Diſability; they who think the being preſent at a Meeting to be ſo high a Crime, can hardly think, that a Toleration of ſuch Meetings ought to continue long; and yet the Bill ſays, the Act of Toleration ought to be kept inviolable.

The Lords do not think it at all neceſſary to make any increaſe of Puniſhment for a ſecond Offence, becauſe the firſt Offence is made Forfeiture of Office; and when the Office is gone, the Perſon may go to a Meeting without Breach of any Law, while the Act of Toleration continues; and if he ſhall afterwards get another Office, he will forfeit the ſame, and incur the Penalties in this Act, if he ſhall ever after be preſent at a Conventicle, which their Lordſhips think ſufficient Puniſhment for a ſecond Offence.

2d Skin, 33d line. The Lords agree to the Commons Amendments to their Lordſhips Amendment, with the Addition of the Words following, after the Words [prayed for] viz. In purſuance of the Act paſſed in the firſt Year of King William and Queen Mary, entituled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the*

the Crown; and the Act paſſed in the 12th and 13th of King William the third, entituled, *An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject.* Anno 1 Ann. 1702.

The Lords inſiſt on the Clauſe (B.) Becauſe to leave Proteſtant Diſſenters ſubject to Penalties, if they do not accept of Offices, and at the ſame time to reſtrain them, if they accept of them upon the Penalties of this Bill, from doing what they think themſelves obliged to, in Conſcience, is Perſecution for Conſcience, aud does not agree with what is ſet forth in the Preamble of the Bill.

The Lords inſiſt on the Clauſe (C.) Becauſe they ſee no Reaſon why being preſent at Sermons or Lectures, preached or read in the Univerſities, and eſtabliſhed by ancient and very good Intentions, ſhould ſubject Men to the Danger of incurring the Penalties of this Law; and the ſame Clauſe was thought neceſſary in the Act of Uniformity.

The Lords inſiſt on the Clauſe (D.) Becauſe the foreign, Reformed Churches allowed, or to be allowed, were, by the Act of Uniformity, exempted from the Penalties of that Law; and other foreign Proteſtants, who have been forced out of their own Country, by a cruel Perſecution, having ſettled here in England, by Encouragement from Parliament, as well as from the Crown, it would have a ſtrange Appearance, if it ſhould be thought ſo high an Offence for any of her Majeſty's Subjects in Office, but once to be preſent at their Way of Worſhip: This would give ſuch a Diſcountenance to thoſe of the ſame Religion abroad, as would no way ſuit with her Majeſty's Character of Head of the Proteſtant Intereſt in Europe.

The Lords inſiſt on the Clauſe (E.) Becauſe the Perſons concerned in it have no Profit, nor any Truſt but what relates to the Poor; and without this Clauſe, Charitable Foundations, as Hoſpitals, public Work-houſes, and the like, would meet with Diſcouragements, and the Number of them might be leſſened.

The 16th, The Committee of both Houſes met at the free Conference, which was manag'd for the Lords, by the Duke of Devonſhire, the Earl of Peterborough, the Lord Biſhop of Salisbury, the Lord Somers, and the Lord Halifax. Free Conference.

And for the Commons, by Mr. Bromley, Mr. St. John, Mr. Finch, Mr. Sollicitor-General, and Sir Thomas Powis.

'Who acquainted the Managers for the Lords, that the Commons had agreed to the Addition of the Words their Lordſhips had made to the Commons Amendments to the Lords Amendment in the 2d Skin, l. 33. but inſiſted on their Diſagreement to the Lords other Amendments, and to their Lord-

Anno 1 Ann. 1702.

Lordſhips Clauſes marked B, C, D, and E, and therefore had deſired this free Conference with the Lords, in order to preſerve a good Correſpondence between the two Houſes.

'That the Intereſts of the Church and State were not to be ſupported without it; and that the Commons might omit nothing to maintain a good Correſpondence, they had taken this Way, which had been practiſed with ſo good Succeſs by their Anceſtors.

'That the Intent of this Bill for preventing Occaſional Conformity, is only to reſtrain, to put a Stop to a very ſcandalous Practice, which is a Reproach to Religion, gives Offence to all good Chriſtians, and to the beſt among the Diſſenters themſelves.

'That this Bill enacts nothing new; that it is intended to make the Laws in being more effectual.

'That thoſe Laws were thought ſufficient to ſecure our Eſtabliſhment; but ſince the Iniquity of Men had found out Ways to evade and elude them, the Commons would never doubt but the Lords would let theſe Men ſee, they would not be wanting on their part, to maintain and ſupport it; that this Bill appears to the Commons, abſolutely neceſſary for the preventing thoſe Miſchiefs which muſt prove deſtructive to the Church, and the Monarchy.

'That the Commons were incapable of having any Deſigns they were aſhamed to own: That they deſigned nothing but the Preſervation of the Church of England, and the Monarchy, and doubted not to meet with a ready Concurrence from the Lords in their Deſigns.

'That an Eſtabliſhed Religion, and a National Church, are abſolutely neceſſary, when ſo many ill Men pretend to Inſpiration, and when there are ſo many weak Men to follow them.

'That if a national Church be neceſſary, the only effectual way to preſerve it, is, by keeping the Civil Power in the Hands of thoſe whoſe Practices and Principles are conformable to it.

'That when the Corporation-Act was made, the Parliament had freſh in their Minds the Confuſions and Calamities, that had been brought upon the Nation, by ſuch as pretended to be at the ſame time in the true Intereſt of Religion and their Country: That the Parliament by that Act, and afterwards by the Teſt Act, thought they had ſecured our Eſtabliſhment both in Church and State, and that they had provided a ſufficient Barrier to defeat and diſappoint any Attempts againſt them, by enacting, that all in Offices ſhould receive the Sacrament of the Lord's-Supper, according to the Rites and Uſage of the Church of England; and never imagined a Set of Men would, at any time, riſe up, whoſe Conſciences

ſciences were too tender to obey the Laws, but hardned enough to break through any. Anno 1 Anne. 1702.

'That as upon the Revolution, the laſt Reign began with an Act in favour of the Diſſenters, ſo the Commons do deſire, in the Beginning of her Majeſty's auſpicious Reign, an Act may paſs in favour of the Church of *England*, that the Laws which have been invaded may now be effectually enforced; and that thoſe Men may be kept out of Offices, who have ſhewn they never wanted the Will, when they had the Power, to deſtroy the Church.

'That nothing had been more miſrepreſented, than this Bill.

'That this Bill does not intrench on the Act of Toleration, and in no reſpect affects what is enacted by it.

'That this Bill takes not from the Diſſenters any one Privilege they have by Law.

'That this Bill gives not any one Privilege to the Church of England, which is not (at leaſt) intended her by the Laws as they now ſtand.'

Their Managers then acquainted the Lords, that the Commons inſiſted on their Diſagreement to the ſecond and third Amendments made by the Lords in the Preamble of the Bill, and on their Diſagreement to the fourth Amendment; and argued,

'That a Preamble is to declare the Occaſion of making a Law; it makes no Law; and if it be proper to the enacting Clauſe, 'tis a proper Preamble.

'That the Propoſitions advanced in this Preamble are theſe, that whatever Perſons are enacted to qualify themſelves, the Laws intend ſhould be conformable to the Church.

'That if the Laws provide, they ſhall receive the Sacrament, and by that intend a Conformity; then whoſoever breaks the Intention of the Laws, breaks the Law, or at leaſt evades the Law, and it is fit to ſecure us againſt ſuch Practices.

'That if it be fit the Corporation Clauſe ſhould ſtand in the Body, the Lords Reaſons for the Amendments in the Preamble will not be of weight.

'That the Preamble mentions ſuch Perſons and ſuch Offices, which muſt be the Perſons and the Offices the Act relates to, and can be no other.

'That the word *Enacting* can only be underſtood of the Laws that do ſo enact, and being relative, is ſtill more plain and neceſſary.

'That however, if the Lords had pleaſed, they might, by a very little Amendment, have obviated the Objection they make to theſe Words, by changing *every Perſon* into *ſeveral Perſons*;

Anno 1 Ann. 1702.

Perſons; which would have reconciled them to the moſt rigid Conſtruction.'

'Then their Managers acquainted the Lords, that they inſiſted on their Diſagreeing to the fifth Amendment, and argued,

'That the Words in the Teſt Act are more general and uncertain than thoſe in the Corporation Act, which their Managers cited and compared.

'That the Words in the Corporation Act have been there more than forty Years, without any Inconveniency from them, or any Complaint againſt them for their being too general and uncertain.

'That the Inducements for paſſing the Corporation Act, according to the Preamble, were, that a Succeſſion in Corporations might be perpetuated in the Hands of Perſons well affected to the King and the eſtabliſhed Government, and for the Preſervation of the public Peace both in Church and State.

'That theſe were the Purpoſes the Commons deſigned in the paſſing this Law.

'That theſe Purpoſes the Commons know the Lords will own with them, are very proper to be attained, and that the Commons can at no time diſown them, becauſe they can at no time have any other.

'That the Lords agree this Bill ſhould relate to Officers in the Teſt Act, becauſe the Law intends thoſe Officers ſhould be conformable; and if the Intention of that Law be the Reaſon to provide againſt ſuch Evaders of it, the like Intention in the Corporation Act, will ſerve for a Reaſon to provide againſt the Evaders of the Corporation Act.

'That by Occaſional Conformity the Diſſenters may let themſelves into the Government of all the Corporations, and 'tis obvious how far that would influence the Government of the Kingdom.

'That to ſeparate from a Church which has nothing in it againſt a Man's Conſcience to conform to, is Schiſm.

'That Schiſm is certainly a ſpiritual Sin, without the ſuperadding of a temporal Law to make it an Offence.

'That Occaſional Conformity declares a Man's Conſcience will let him conform, and in ſuch a Man, Non-conformity is a wilful Sin; and why ſhould occaſional Conformity be allowed in Corporations, when the Lords agree, that out of Corporations it ought to be allowed?

'That if it be reaſonable, as the Lords allow it is, that he who hath an Office out of a Corporation, tho' it entitles him perhaps to very little Profits or Truſt, ſhould be conformable; it is certainly much more reaſonable, that another who is truſted with Magiſtracy and Power in a Corporation, and

and has thereby a greater Influence, ſhould be confor- Anno 1 Ann. 1702.
mable.'

The Managers for the Commons inſiſted on their Diſagreeing to the Lords eighth Amendment, and argued,

'That if the Lords were pleaſed to conſider how much greater the Penalties and other penal Laws were, in many Inſtances, than in this Bill, they preſumed the Lords would not think thoſe in this Bill, exceſſive.

'That in laying Penalties, the Commons ſhall always endeavour to make them ſuch as ſhall neither tempt to Perjury, nor totally diſcourage Informations and Proſecutions, which they thought this Amendment of the Lords would do, ſhould the Commons agree to it.

'Their Managers inſiſted on their Diſagreement to the Lords ninth Amendment, and argued,

'That the Puniſhment of Incapacity, the Recapacitating and the Increaſe of Puniſhment for a ſecond Offence, are warranted by many Precedents of the like nature in other penal Laws.

'That an Incapacity, as qualify'd by the ſubſequent Proviſo, is a very proper Puniſhment; that a ſecond Offence is a Relapſe and an Apoſtacy, which are Circumſtances that aggravate and make it more heinous than the firſt Offence, and therefore deſerve an Increaſe of Puniſhment.

'That he is indeed reduced to a very unhappy Condition, who is made incapable of ſerving his Prince and Country; but in the preſent Caſe, our Prince and Country would be in a more unhappy Condition, to be ſerved by ſuch, whoſe Principles are inconſiſtent with the Good and Welfare of our Eſtabliſhment.

'That the Commons could never imagine the Lords could infer from this Incapacity, the taking away the Toleration.

'That the Toleration was intended only for the Eaſe of tender and ſcrupulous Conſciences, and not to give a Licence for Occaſional Conformity.

'That Conforming and Non-conforming are Contradictions; nothing but a firm Perſuaſion that our Terms of Communion are ſinful and unlawful can juſtify the one, and that plainly condemns the other.'

'For their inſiſting on their Diſagreeing to the Clauſes marked *B*, *C*, *D*, and *E*, their Managers offered theſe Reaſons:

'That the Exempting Proteſtant Diſſenters from ſerving Offices, would rather eſtabliſh Occaſional Non-conformity than prevent Occaſional Conformity, and therefore increaſe, not cure, the Evil the Bill was intended to remedy.

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' That the Act of Uniformity, which eſtabliſhed the Liturgy and Practice of the Church of England, has provided for the Sermons or Lectures preached or read in the Univerſities.

' That thoſe Sermons and Lectures having been in ſuch manner provided for, it was not thought neceſſary when the Act paſſed in the 16th, and in the 22d Car. II. to prevent and ſuppreſs ſeditious Conventicles (in both which Acts Conventicles are deſcribed, as in this Bill) to have any particular Exceptions for them, and yet they were never by any Conſtructions taken to be Conventicles.

' That the allowing an Exemption to ſuch as ſhould be preſent at the Exerciſes in the foreign Reformed Churches, would be to open a Door for the evading this Law.

' That the Places of Governours of ſome Hoſpitals are very conſiderable Preferments, and given as ſuch to the Clergy of the Church of England, and the Commons can never conſent by any Law, to let in the Diſſenters to the Enjoyment of them.'

' The Managers for the Lords did maintain the Alterations made in the Bill, and the Clauſes added to it.

' The Subſtance of what was ſaid by their Managers was, that the Lords were as deſirous as the Commons to preſerve a good Correſpondence betwixt the two Houſes.

' That by their agreeing ſo far as they have done to this Bill, they have gone a great way for the preventing the Evil this Bill is intended to remedy, and own it to be a Scandal to Religion, that Perſons ſhould conform only for a Place.

' That the Lords do not take going to a Meeting to be *malum in ſe*, for that the Diſſenters are Proteſtants, and differ from the Church of England only in ſome little Forms, and therefore the Lords think loſs of Office a ſufficient Puniſhment, without an Incapacity.

' That it can never be thought thoſe of the better ſort will be guilty of this Offence; if they are, they loſe their Offices, and loſs of Office is a ſevere Penalty in inferior Officers of the Cuſtoms, and Exciſe, and who have little elſe to ſubſiſt on; in ſhort, they will be undone by the loſs of their Office; and this the Lords think ſevere enough, without carrying it much further. This is yet more conſiderable in Patent-Places, which by a common cuſtom are bought and ſold, and are of the nature of Freeholds.

' That Incapacity is too great a Penalty, and that it is hard to imagine any Offence, that is not capital, can deſerve it.

' That there is no more reaſon to puniſh this Offence with Incapacity, than to make it Felony.

' That the Diſſenters are not obnoxious to the Government, as when the Corporation-Act was made.

' That

Anno 1 Anne. 1702.

'That the moſt conſiderable Perſons of the Diſſenters are well affected to the Conſtitution, and are hearty Enemies to the Queen's and Kingdom's Enemies.

'That in ſome Corporations the Lords take the Election of Members to ſerve in Parliament, to be only in ſuch as are concerned in the Government of them, as at Buckingham, &c. and the Lords would not by this Bill deprive Men of their Birthrights.

'That the Lords do not think fit to bring any greater Hardſhips upon the Diſſenters, ſince great Advantages have accrued from the Act of Toleration.

'That the Diſſenters had formerly been ſeditious, and had appeared in open Rebellion, they then declared both againſt Church and State.

'But of late, in the greateſt Extremity of the Church, they joined with her; when the Biſhops were in the Tower, the Diſſenters ſhewed they had no prejudice to the Church, and ſo they have continued to behave themſelves.'

'That the Lords did equally deſire a good Correſpondence betwixt the two Houſes, and were ſo ſatisfied of the neceſſity of Union at this time, that they thought all meaſures fatal that might create any Diviſions amongſt Proteſtants at home, or give any check to the neceſſary Union amongſt our Allies abroad, of the reformed Religion.

'For which Reaſons, in a time of War, they thought Alteration unneceſſary, and dangerous, and were unwilling to bring any real hardſhips upon the Diſſenters at this time, or give them any Cauſe of Jealouſies or Fears.

'That the Toleration hath had ſuch viſible and good effects, hath contributed ſo much to the Security and Reputation of the Church of England, and produced ſo good a Temper amongſt the Diſſenters, that the Lords are unwilling to give the leaſt diſcredit to that Act; being ſenſible that Liberty of Conſcience, and gentle Meaſures, are moſt proper, and have been found moſt effectual towards encreaſing the Church and diminiſhing the number of Diſſenters.

'That the Lords apprehend, that ſome parts of this Bill by them amended, have an air of ſeverity improper for this Seaſon; that though there may be ſome things to be found fault with, yet a proper time ought to be taken to apply remedies; that the attempting too haſty Cures, have often proved fatal.

'That the Lords could not conceive, the Intereſt of the Church and State were not to be ſupported without this Bill; ſince in caſe of ſuch Danger, and neceſſity, this Remedy muſt have been propoſed before now, by ſome of thoſe worthy Members of the Church of England, who in ſo many Parliaments ſince the Toleration, have ſhown ſo much Zeal for the national Church and Government.

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'That the Lords think they have ſufficiently ſhewn their diſlike to the Practice of Occaſional Conformity, on which they inflict no leſs a Puniſhment than loſs of Place, and have conſented likewiſe to a reaſonable Fine to be laid on thoſe who are proved guilty of this Crime.

'The Lords cannot but conceive, that if this Bill did enact nothing new, there would not be ſuch a Conteſt about it; that it is plain, tho' Occaſional Conformity ought always to have been eſteemed a Crime, yet that the Practice was new, and the Puniſhment provided by this Law new likewiſe; the Lords therefore conſent to a Puniſhment, but would proportion the Penalty to the Offence.

'That the Commons give up this Argument, when they propoſe for new invented Crimes, new invented Puniſhments.

'That as the Commons need not to be aſhamed of Deſigns ſo laudable as the Preſervation of the Church of England, and Monarchy, ſo the Lords conclude their Deſires of ſecuring the Toleration-Act, the Peace and Quiet of the Kingdom at home, and the Intereſt of the Nation abroad, will meet with a fair Conſtruction; eſpecially when they hope the Church is ſo well ſecured by her Doctrine, by the good Laws of the Realm, and the Protection of ſo pious a Queen, aſſiſted by a Parliament ſo well affected to the Church and State.

'That the Lords not only allow the neceſſity of an eſtabliſhed Religion, and a national Church, but being likewiſe of that national Church, they can never be wanting to thoſe Meaſures they think proper to ſecure it. And tho' by the firſt appearance, the Members of the Houſe of Commons may ſeem, upon this Occaſion, the moſt zealous Champions for the national Eſtabliſhment, yet the Lords think the only Conteſt between them is, which ſhall moſt befriend and take care of the Church; the one would procure a haſty-ſettled Submiſſion, not ſo much to be depended upon; the other would obtain for her a more gradual but a ſafer Advantage over thoſe that diſſent from her, the ſame End being deſigned by both, and only ſome difference in the Means to attain it.

'That the Lords do not well underſtand the Inference, that as upon the Revolution the laſt Reign began with an Act in favour of the Diſſenters, ſo the Commons do deſire in the beginning of her Majeſty's Reign, an Act may paſs in favour of the Church. The Lords conceive, that both Reigns began upon the ſame bottom and foundation; and that as in this Reign her Majeſty hath been pleaſed to give gracious Aſſurances as to Liberty of Conſcience, ſo in the laſt, the Church ever met with Protection and Support.

'That the Intereſt of the Prince is to ſupport the Church againſt her Enemies; that it is hard, as well as untrue, to

ſay

ſay of the Diſſenters they never wanted the Will, when they had the Power to deſtroy the Church and State; ſince in the laſt and greateſt Danger the Church was expoſed to, they joined with her with all imaginable Zeal and Sincerity againſt the Papiſts, their common Enemies, ſhewing no prejudice to the Church, but the utmoſt Reſpect to her Biſhops, when ſent to the Tower; and that ever ſince they have continued to ſhew all the Signs of Friendſhip and Submiſſion, to the Government of Church and State. Anno 1 Ann. 1702.

'That in truth, formerly the Diſſenters had been ſeditious, and in Arms and Oppoſition to the State and Church; but it was the effect of Perſecution, and that even then, they were open and avowed Enemies; but that Toleration and Tenderneſs had never miſſed of procuring Peace and Union, as Perſecution had never failed producing the contrary effects.

'That the Lords cannot think the Diſſenters can properly be called Schiſmatics, at leaſt thoſe that differ in no eſſential point; that ſuch an Opinion allowed, would bring a heavy Charge upon the Church of England, who by a Law have tolerated ſuch a Schiſm, that Connivance hath been uſed to Schiſmatics: that public allowance was never given to ſuch, and the Churchmen having Allowed Communion with the reformed Churches abroad, profeſſing Calviniſm, it muſt follow, they hold them not guilty of Schiſm, or could not allow Communion with them.

'That this Bill inflicts a ſecond Puniſhment on thoſe who fled from France for their Religion; That they ſought a very improper refuge amongſt thoſe that muſt think them guilty of Schiſm, and muſt uſe them accordingly; That this may be uſed as an Argument to juſtify even the Perſecution in France: Why may not the Roman Catholics with Reaſon baniſh thoſe, that even Proteſtants can hardly endure amongſt them, and for whoſe Doctrine and Practice they ſhew ſuch an Averſion, that a Man muſt forfeit his Place, and undergo a hard Penalty but for entering once into their Congregation?

'That the Lords cannot depart from the Clauſe relating to the Dutch and Walloon Churches ſo long eſtabliſhed amongſt us, leſt it ſhould give great Diſguſt and Offence to our Allies abroad; and at the ſame time forfeit the greateſt Character can be given a Church, that of Tenderneſs and Charity to Fellow-Chriſtians; the contrary Practice being what is ſo much abhorred amongſt Roman Catholics.

'That tho' the Lords allow, that no Man hath a Place by Birthright, or but few ſuch Examples in our Government; yet that giving a Vote for a Repreſentative in Parliament, is the eſſential Privilege whereby every Engliſhman preſerves his Property; and that whatſoever deprives him of ſuch Vote, deprives him of his Birthright. 'The

Anno 1 Ann. 1702.

'The Lords are of Opinion, the Diſſenters ſhould have Liberty of Conſcience, but agree to the further Meaſures propoſed by the Commons, to allow neither Diſſenters, nor Occaſional Conformiſts any ſhare in the Government; but they take this to be the great Security for the eſtabliſhed Religion, that all who ſit in the Houſe of Commons muſt be Churchmen, and the difference between a Churchman choſe by Churchmen and choſe by Diſſenters is only this, that the former will be for uſing ſeverer, the other gentler means, for bringing the Diſſenters into the Church.

'That the diſagreeing to the Clauſe relating to Work-Houſes where the Poor were employed and relieved, ſeems very hard, ſince it could never be conceived, that the diſtribution of ſome presbyterian Bread to the Poor, and diſſenting Water-gruel to the Sick, could ever bring any Prejudice to the Church of England; eſpecially by ſuch as having no Authority in the Government, or profit by the Adminiſtration of ſuch Charities, gave them indifferently to thoſe of all Perſuaſions.

'Allow them Charity to cover their Sins, which God allows and commands.

'That the Lords conceived the Act of Toleration had viſibly proved to the Advantage of the Church, that even the Practice of Occaſional Conformity in a few, as it had done great Prejudice to the Diſſenters, ſo had it added to the Reputation and Authority of the Church; the Diſſenters having determined the point againſt themſelves by this Practice, for if they can conform for a Place, much more ought they to do ſo in compliance with the Law, and for the ſake of Unity.

'But one or two Inſtances of this in ſo long a time.

'That the Lords are of Opinion the Diſſenters are coming into the Church, and that nothing but terrifying Meaſures and Severity can prevent the happy Union.

'The main Deſign of this Bill, is to ſecure the Church of England, and in this the Lords do perfectly agree with the Commons, both ſides of the Houſe join in it with equal Zeal; and the main point of this Bill being the excluding all Perſons from Employments of Truſt, who join themſelves to any other Bodies for religious Worſhip, beſides the Church of England, the Lords do agree entirely with them likewiſe in this; all the difference is, what further Penalties ſhould be laid, beſides the forfeiture of the Employment, on Perſons ſo offending.

'The Lords look on the fixing of Qualifications for Places of Truſt to be a thing entirely lodged with the Legiſlature, that without giving any reaſon for it, upon any Apprehenſion of Danger, how remote ſoever, every Government may put

put ſuch Rules, Reſtraints, or Conditions, on all who ſerve in any Place of Truſt, as they ſhall ſee cauſe for; but Penalties and Puniſhments are of another nature. Anno 1 Ann. 1702.

'Draco's Laws, by reaſon of their extreme ſeverity, are ſaid to have been writ in Blood; if Petty Larceny were made capital, there would be juſt Occaſion for cenſure.

'There ought to be a Proportion obſerved between the Offence and the Puniſhment; and Offences of a lower nature ought not to be puniſhed more ſeverely than Offences of a higher nature.

'Popery has been ever look'd on as that which we ought to apprehend and fear the moſt, and guard chiefly againſt, it being our moſt inveterate, moſt reſtleſs, and moſt formidable Enemy; and therefore there has been always a great difference put between Papiſt and Proteſtant Diſſenters, how bad and dangerous ſoever they may be.

'There has been a Spirit of Moderation eminently conſpicuous in the whole Progreſs of our Legiſlation, with relation to that Religion, ſuitable both to the natural Gentleneſs of this Government, and to the Charity which our Religion teaches.

'In the firſt beginning of our Reformation under Edward the ſixth, the Act of Uniformity was conceived in terms ſuitable to that Moderation.

(2 & 3 Edw. 6. cap. 1.) Any Clergyman that ſhould uſe any other manner of Maſs, wilfully ſtanding in the ſame, or that ſhould preach againſt the Book of Common Prayer, for the firſt Offence was only to forfeit one Year's Profits of any one of his ſpiritual Preferments, with ſix months Impriſonment: Here was a mild Puniſhment, even of a Clergyman offending; and yet that was not inflicted, unleſs he continued obſtinate.

'By the ſame Act, if any of the Laity ſhould procure or compel any to uſe any other Form of Worſhip in a Cathedral or Pariſh-Church; even for ſo public an Affront to the eſtabliſhed Religion, he was only to be fined in 10l. or to ſuffer three Months Impriſonment.

'With this gentleneſs was our Reformation at firſt ſet up; and tho' perhaps, it may be ſuggeſted, that by this mildneſs Papiſts were ſo favourably uſed, that they had it ſoon in their power to lay that Work in the Duſt, and to burn thoſe who had uſed them ſo mercifully: Yet when things were happily re-eſtabliſhed by Queen Elizabeth, tho' the Penalties were a little heightned, ſtill the Moderation of that time was eminent.

'A Clergyman that before, for his firſt Offence, had, forfeited one Year's Profits, of any one Preferment, did by the Act of the Queen forfeit one Year of all his Preferments, and the Procurers or Compellers of uſing another Form of Worſhip,

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Worſhip, even in a Cathedral, were fined in an hundred Marks.

'With ſuch gentle Methods was our Reformation at firſt eſtabliſhed: And when the many Conſpiracies againſt the Life of that Queen forced the Government to greater Severities, yet in the Statute of the twenty third of the Queen, the hearing of Maſs was indeed made more Penal, one hundred Marks was ſet for the Fine, with a Year's Impriſonment; but with this temper, that if the Perſon accuſed did before Judgment ſubmit and conform, he was to be diſcharged: this is the higheſt ſeverity to which our Laws have carried the hearing of Maſs, and here is an eaſy way provided to eſcape it. It need not be obſerved that the Penalty of this Bill goes higher, and is not eaſily avoided.

'A Papiſt Convict, as ſoon as he conforms himſelf, and receives the Sacrament, is immediately cleared; no Incapacity lies upon him: But this Act carries that matter further, to a Year's Incapacity. A Papiſt that ſhall relapſe, and fall under a ſecond Conviction, is only convicted over again, without any Aggravation of the Cenſure; which by this Bill is much heightned upon a ſecond Offence: ſo that the Penalties of this Bill are higher than any the Law has laid on Papiſts, for aſſiſting at the ſolemneſt Acts of their Religion. It is true, if a Papiſt ſhall hear Maſs with five Perſons more than thoſe of his own Family, he falls under the Penalties of this Bill; but all that have been abroad, and are acquainted with the Methods of that Religion, even where it acts in a full freedom, know that the practice of ſolitary Maſſes amongſt them is ſo common, that no Man of that Church is in danger of falling under any Penalty for having any number about him in the Acts of their Worſhip.

'When the firſt Act againſt Conventicles paſt, which is the Foundation of a great part of this Bill, the Fines ſet were ſix Months Impriſonment, to be redeemable by five Pounds, for the firſt Offence; a Year's Impriſonment, to be redeemable by ten Pounds, for the ſecond Offence; and Baniſhment, for the third Offence.

'The Lords diſliking that Severity, added a Clauſe for redeeming that by an hundred Pounds, and appropriated the Fine; the Severity of theſe Pains did not agree with the Temper of Engliſhmen, and the Act was not much executed. Some Years after that, a gentler Act was made, the Fines were then ſet at five Shillings and ten Shillings for the firſt and ſecond Offence: but no Man could be fined above ten Pounds for any Offence againſt that Act, except the Maſter of the Houſe where the Conventicle was held, who was to be fined in twenty Pounds.

'The Severity of this was intended to force the Diſſenters to petition for the Toleration, that was then deſigned, and followed

followed not long after; this Act was executed in Starling's Mayoralty with the greateſt Severity, at the time that Madame was at Dover. Soon after, that Proſecution was ſlackened; but, after the attempt made for the Excluſion, theſe Laws were again executed for ſome Years, with great Severity by a Popiſh Management. After they had ſet the Church againſt the Diſſenters, then, according to their wonted Acts, they ſtudied to ſet the Diſſenters as much againſt the Church. Anno 1 Ann. 1702.

'When, by ſuch Methods, we were reduced to the laſt extremities, then was the late King invited to come and deliver us; and after he had ſecured our Religion, our Laws, and our Liberties, he, by the Act of Toleration, which he paſſed, quieted thoſe Heats that had almoſt conſumed us: Whatever ſome may think, he will be ſtill reckoned amongſt the greateſt of our Kings; to him we owed a long continuance of a flouriſhing Time, even during a great War, and it is to him that we owe the great happineſs of her Majeſty's being now on the Throne.

'The Church has no reaſon to complain of the Effects of the Toleration; for as the numbers of thoſe who divide from us do viſibly abate all over the Nation, ſo the Heat and Fermentation which was raiſed by thoſe Diviſions is almoſt entirely laid, and we cannot but look on that as a happy Step towards the healing of our Wounds.

'But what may we not look for under the Reign of ſuch a Queen! whoſe Example, whoſe Virtues, and Zeal give us reaſon to hope for a happy State of matters in the Church, if undue Severities do not again raiſe new flames, and ſet a new edge on Men's Spirits, which may blaſt thoſe Hopes, and defeat the Succeſs that we might otherwiſe expect under ſuch an auſpicious Reign?

'Before the Act of Toleration paſſed, while Conventicles were illegal and criminal Aſſemblies, yet even then a Man in Office, that was preſent at them, was only liable to a Fine of ten Pounds: Whereas by this Bill, he is liable to a Fine of an hundred Pounds for being preſent at them, though they have now an Impunity by Law: It does not ſeem very ſuitable, that the ſame Action ſhall be made ten times more Penal after ſuch an Impunity is granted, than it was before the paſſing that Law, while ſuch Aſſemblies were illegal.

'This is yet more extraordinary, with relation to the Churches of the foreign Proteſtants, that were taken care of even in the Act of Uniformity, ſo that theſe are illegal Aſſemblies, not only tolerated, but allowed: Now how unlimited ſoever the Legiſlature is, as to the Qualifications neceſſary for all that hold any Place of Truſt, yet it ſeems contrary to all known Rules, to lay a very heavy Penalty on any Action that is allowed by Law.

Anno 1 Ann. 1702.

'A known Maxim, with relation to the Laws that are highly penal, is, that the Words expreſſing the Crime, ought to be clear, and of a determinate Senſe; not liable to Conſtructions and Stretches: Since the greatneſs of the Penalty may prove an inducement to make thoſe Stretches, and to carry them far beyond what is intended. The Crime ſo penal by this Bill, is to be in a Meeting with five more than the Family, under the pretence of religious Worſhip, other than according to the Liturgy and Practice of the Church of England. Now we know indeed what the Liturgy is, but it is not ſo eaſy to tell what the Importance of the word Practice may be, or how far that may be carried; whether it is the Practice of Cathedral or Parochial Churches, and whether Practice ſhall govern the Liturgy, as in the not ſaying the ſecond Service at the Altar, or Chriſtning after the ſecond Leſſon? and whether all Family-Prayer, if not by the Form of the Liturgy, is not condemned? Though many Books for Family-Prayers have been much recommended, and commonly made uſe of.

'In the Country, few Perſons of Condition are ſo retired, as not to have often five more than their Family within their Houſes; muſt theſe be excluded from Family-Prayer, if it is not according to the Liturgy? and may not even the Liturgy-Prayers, without Pſalms and Leſſons, be likewiſe included within theſe words, or at leaſt be carried to that by vexatious Informers, and be ſo given by eaſy Juries, and partial Judges? It therefore ſeems enſnaring and unbecoming ſo mild a Government, as ours happily is, eſpecially when it is in ſuch hands, to lay ſo heavy a Penalty upon an Offence ſo dubiouſly expreſſed.

'But as the Penalty ſeems exceſſive, and the words are of uncertain Signification, ſo the Lords do not approve of the Application of the Sums to be raiſed by this Bill, that they ſhould all go to the Informer. The ancient Method was, to give them to the Crown, and to leave the encouraging informers to the Crown: It was one of thoſe Truſts that were lodged with the Sovereign; and ſo the Laws were to be executed ſeverely or more remiſsly as the public Occaſions required; but by this Bill all is given to the Informer, one hundred Pounds for the Offence, and five Pounds a Day for three Months, both which may amount to five hundred and fifty Pounds.

'For though an Oath muſt be made within ten Days, yet this not being to be done in open Court, the Party may not hear of it; and if he knows it to be falſe, he may have no regard to it, ſo he may let it run to the term limited by the Bill.

'This Nation has been groaning long under falſe ſwear-

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ing, that has been in every corner; all ſides have had their ſhare in it. Till God pours out another Spirit upon us, one of our chief Securities againſt falſe Witneſſing, is, that ſuch an Infamy follows it, eſpecially when Servants ſwear againſt their Maſters, that a ſmall matter cannot tempt even a bad Man, to ſo baſe a Practice: But if ſo great a Sum were to be the Reward of ſuch Villany, it is hard to tell where it would ſtop. Anno 1 Ann. 1702.

'A couple of bad Servants, diſmiſt for ill practices, might be tempted, by Intereſt as well as Revenge, to lay a probable Story, and to carry it through by bold ſwearing; a great deal of this ſort was but too much practiſed among us twenty Years ago; and it is to be feared, that ſuch a Bill as this would ſet the ſame things again on foot.

'Thoſe who acquaint themſelves with the Roman Hiſtorians, ſee in them what a ſort of People the Delatores were; the encouraging them, eſpecially Servants againſt their Maſters, was reckoned among the greateſt Reproaches of the worſt Emperors: But tho' Domitian made much uſe of ſuch vermin, it is ſet out with great Pomp and in very lively Expreſſions, as the glory of Trajan's Reign, that he freed Rome from that Plague, and baniſhed all thoſe infamous Betrayers of their Maſters. It is to be hoped, that a Reign which God delights to honour, ſhall have no ſuch blemiſh caſt on it: And that no Encouragement ſhall be given to falſe Accuſations and Perjury, which the Lords apprehend might follow, if ſo great a Reward were offered as this Bill propoſes: They think the Reward they offer is enough to encourage honeſt and well-minded Men to diſcover what they may know: And do not think fit to lay before them Temptations, that may be too ſtrong in ſo corrupt an Age.

'As for this Occaſional Conformity, the Lords do not go about to excuſe, or to defend it; but they who have obſerved the Progreſs of theſe matters, and have born a large ſhare in theſe Controverſies, muſt acquaint the Commons, that it is no new Practice invented to evade the Law: It has been both the Principle and Practice of ſome of the moſt eminent among the Diſſenters ever ſince St. Bartholomew's, in the Year 1662. It is known, that Baxter and Bates did ſtill maintain it, and that ſeveral Books have been writ about it: And as the fierceſt of the Diſſenters, who intended to keep up a Wall of Partition between them and the Church, have oppoſed it much; ſo that Party of Diſſenters that came neareſt the Church, and of whom the greateſt numbers have come over to it, were thoſe that pleaded for it. Nor is it a certain Inference, that becauſe a Man receives the Sacrament in the Church, he can therefore conform in every other particular; the Office of the Communion, is certainly one of

Anno 1 Ann. 1702.

the brighteſt and beſt compoſed of any that ever was in the Church of God: The little exceptions that lay to the Poſture, were ſo fully cleared by the Rubric that is added, that it is indeed a wonder how any Perſon ſhould except to any thing in the whole Office. But it does not neceſſarily follow, that therefore every Man who is ſatisfied with this, ſhould be likewiſe ſatisfied with every other part of Conformity. There was a very learned and famous Man that lived at Salisbury, Mr. Tombs, who was a very zealous Conformiſt in all points but one, Infant-Baptiſm; ſo that the receiving the Sacrament, does not neceſſarily import an entire Conformity in every other particular; no more than a Man who can ſubſcribe to the two firſt Articles of our Religion, that are indeed the main ones, and contain the Doctrine of the Trinity, and the Incarnation and Satisfaction of Chriſt, is by that concluded to aſſent to the reſt of the thirty-nine; the Diſſenters agree to the firſt, but refuſe ſome of the laſt: This is likewiſe to be remembred, that, after St. Bartholomew, in 1662, Occaſional Conformity was a ſtep that carried many much farther from Occaſional; it grew to a conſtant Conformity, if not in the Perſons themſelves, yet in their Children; ſo the Lords now ſee ſome deſcended from Occaſional Conformiſts, eſpouſe the Cauſe of the Church with much Zeal.

'For theſe Reaſons the Lords do conceive the Penalties in this Bill to be exceſſive, and unreaſonable.

'As to the Amendment in the Preamble, the Lords have reaſon to inſiſt on it, becauſe the Words left out by them relate to another Clauſe, which they think ought not to ſtand in the Bill.

'But that is not all; the Words, left out in this Amendment, contain a Propoſition, which they cannot aſſent to as true: For, as the Law ſtands, any Perſon to be admitted to any Office, is not obliged to be conformable or receive the Sacrament; Officers of Inheritance, Foreſt Officers, Noncommiſſion Officers in the Fleet, and many others, are under no ſuch Obligation.

'The Managers of the Houſe of Commons themſelves, ſeem to admit the Words too general to be maintained in ſtrictneſs, and therefore they have laboured to qualify them by Conſtruction; that is an Expedient which muſt be reſorted to, when untrue or improper Words happen to be found in a Law already made; but when a Law is making, it has not been uſual to contend for keeping in Words which are plainly liable to exception, eſpecially in a Caſe where the Clauſe is unneceſſary, and the Preamble ſufficiently expreſſes the Deſign of the Law without it.

'The Lords inſiſt on their Amendment, which leaves out the Words relating to the Corporation-Act.

'They ſay it cannot be diſputed but that the Teſt-Act extends

tends to all the conſiderable Offices and Employments, in which the Security of the Government may be concerned. Anno 1 Ann. 1702.

'That Law was made when the Kingdom was under a juſt apprehenſion of Danger to the Church; and the Expedient agreed upon as moſt likely to ſecure her, was, the placing all the conſiderable Offices in the Hands of her Members; ſo that the Deſign of the Teſt-Act is the ſame with that of this Bill.

'Experience has juſtified the Meaſures taken by that Law, and there has been no Complaint, that it was not extenſive enough as to the ſeveral ſorts of Offices.

'To encounter a Practice which is ſuppoſed may be made uſe of to elude the true Deſign of the Teſt-Act, the Commons have propoſed by this Bill to reſtrain abſolutely Perſons in Office from going to Meetings, and the Lords agree with them ſo far as relates to all manner of Offices comprehended in the Teſt-Act, which the Lords think is the right meaſure to go by.

'All Offices which relate to Magiſtracy (as well within Corporations as without) are manifeſtly comprehended in the Teſt-Act; and therefore the Lords have wondered to hear the Managers of the Houſe of Commons argue, that it is of conſequence to ſecure the Magiſtracy of the Corporations in the hands of Church-men, or to affirm, that if this Amendment was agreed to, Diſſenters may let themſelves into the Government of Corporations; ſince it is directly otherwiſe.

'The Corporation-Act was made, when the Kingdom was juſt delivered from a long Uſurpation, and was principally founded on Reaſons peculiar to that time.

'Indeed nothing but ſo extraordinary a Juncture could have excuſed the placing ſuch extravagant Powers in the Hands of the Commiſſioners appointed by that Act.

'Part of that Act has been repealed, and there was no great regard had to it, at the time when a more effectual Security was given to the Church by the Teſt. The Lords go not about to weaken the Force of the Corporation-Act, but think it not reaſonable to extend the Penalties of this Bill to the general and uncertain Words of that Law.

'The Managers of the Commons ſay, the Words of the Teſt-Act are as general as thoſe of the Corporation-Act; if ſo, we ſeem to be contending about nothing; ſince, how general ſoever the Words of the Teſt-Act are, the Lords have agreed they ſhall ſtand in the Bill.

'The Words in the Teſt-Act are univerſally underſtood; no doubt remains to what Offices and Perſons it extends; it is not ſo as to the Corporation-Act; the uncertainty of the Words in that Law, determines the Lords to think they ought not to be the Deſcription of the Perſons to whom the Bill ſhould reach.

'They

Anno 1 Ann. 1702.

'They think themſelves obliged to be more cautious in this matter, becauſe the Bill now depending does not only concern thoſe who ſhall for the future come into Offices, but ſuch as are at preſent poſſeſſed of them.

'In Corporations there are many Offices of a private and inferior nature; ſome have been obtained by Purchaſe, ſome by long Services; and Men have attained to others in courſe; ſome of theſe are Freeholders, many of them the whole Subſiſtence of Families, and perhaps have been enjoyed many Years, under an obedience to all ſuch terms as the Law now in being has preſcribed. And the Lords think it hard to diſturb Men in their Freeholds and Poſſeſſions by new Laws, unleſs the caſe be ſuch, that the Security of the Government does appear to be manifeſtly concerned. Where that does appear, the Lords can ſatisfy themſelves in diſpenſing with private Conſiderations (as is ſeen by what they have agreed to in this Bill,) but they can not go farther.

'The Lords look on the Penalties in this Bill, as it was framed by the Houſe of Commons, to be very exceſſive, and ſuch as bear no proportion to the Offence, and therefore they cannot agree to them.

'The Practice of Occaſional Conformity is not new, it is almoſt of the ſame date with the Act of Uniformity; it has been a known Diſpute among the Diſſenters, and vindicated in print by ſome of them, and practiſed by many of them, who had no thoughts of Offices, and has been a means of bringing ſeveral Perſons entirely from Meetings. The Objection to their Practice by thoſe of the Church of England, has been but of late.

'The Lords do not go about to juſtify Men who can come ſo far towards uniting with the Church, and yet will ſtop there, any more than they do to to juſtify any other of the points upon which the Diſſenters continue their Separation.

'And ſince there is reaſon to apprehend, that ſuch a liberty as this may be perverted to the eluding the Law, the Lords have agreed to reſtrain it.

'They are willing to make it impoſſible for ſuch Men to keep in Offices, becauſe Hypocrites would make uſe of ſuch a liberty; but they are not willing to ruin Perſons utterly, on account of a Practice, that many well-meaning Men have been and may be led into, and which they think tends naturally to bring them over entirely to the Church.

'The Penalty of 100l. and 5l. a Day, and that whole Sum given to the Informer, the Lords think a dangerous temptation to Perjury.

'Our Law has branded Informers with the hardeſt Character; troubleſome Perſons, who grievouſly charge, vex and diſturb the Commons, this is the Deſcription the Law has given of them.

Judges

Anno 1 Ann. 1702.

'Judges muſt encourage theſe ſort of Men according to the Terms of the Laws when made; but Legiſlators when they are conſidering of Laws to be made, muſt ſpeak of theſe Men as they are.

'So great a Temptation will make the Innocent almoſt as inſecure as the Guilty.

'Experience ſhewed this in the Inſtances of ſome of the moſt active Informers in proſecuting Diſſenters on the Acts againſt Conventicles; who were convicted of Perjuries againſt many Perſons, though there the Temptation was nothing comparable to what it would be, if theſe Penalties ſhould ſtand.

'And though the Commons have yielded to the Lords Amendments, that two Witneſſes ſhall be neceſſary, and that the time of Proſecution ſhall not be left indefinite; yet that will not be ſufficient, for both thoſe things were provided for in the Conventicle-Act.

'And though the Commons have alſo yielded to ſhorten the time for the Proſecution, yet the Penalty may ſtill amount to a very great Sum; for the five Pounds a Day, may go on for three Months.

'The Puniſhment of a total Incapacity, is the heavieſt, next the loſs of Life; and yet it is to be inflicted for the firſt Offence.

'The word Employment is more general than any Word the Teſt-Act has; ſuch Puniſhment ought only to be for a Crime of the higheſt nature; and yet going to a Meeting is no Crime, as the Law now ſtands, nor will it be a Crime in any Man who is not in Office, when the Bill is paſſed into a Law.

'The Lords agree to that part of the Penalty which anſwers the viſible Deſign of the Bill, by making the going to a Conventicle to be Forfeiture of Office. To go further, to ruin Men's Eſtates, to make them infamous, (for what can be more infamous than ſuch a Diſability) they think is to exceed all Bounds.

'The Managers for the Commons ſay, there are greater Penalties in other Laws; it does not appear by any Inſtances which have been given. Theſe Penalties are much heavier than in moſt of the Laws about Religion. But if that were true, what is to be inferred from thence, if the Crimes be not the ſame in the heinouſneſs of their natures? Juſtice and good Policy require there ſhould be ſome Proportion between the Offence and the Puniſhment.

'The Lords have quite another Conſideration of the Penalties in this Bill, and thoſe of the Teſt-Act.

'In the preſent Caſe, an innocent Man has only a ſort of negative Proof to defend him from falſe Witneſſes, who may

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chuſe to aſſign ſuch a Time and Place for the Fact, as they know the party can be leaſt likely to defend himſelf.

'Whereas in the Caſe of the Teſt-Act, the Man who reſolves to obey the Law, which is to ſubſcribe the Declaration, and receive the Sacrament, has not only the Liberty to chuſe his own Witneſſes of his receiving the Sacrament, and Atteſtation of the Miniſter who officiates; but the whole is put upon Record: So that when a Man has complied with the Law, he is beyond all Poſſibility of ſuffering by a falſe Accuſation.

'There ſeems to be no Occaſion here to increaſe the Puniſhment upon a ſecond Offence, for it does depend upon the former, as in moſt caſes, where the Penalty is increaſed for the ſecond Offence; for when the Office is gone, the Perſon is under no legal Reſtraint from going to Conventicles.

'If he obtains a new Office, he brings himſelf at the ſame time under the reach of this Law, upon a new Account; and if he offends again, he will loſe that Office, beſides incurring the pecuniary Penalty.

'The Proviſo, which is to qualify the Incapacity, is made ſo very hard, that it is a new Inſtance of the great Severity of the Bill. A Man to ſet himſelf right again, muſt take more public Shame to himſelf, than the ſevereſt Laws againſt Papiſts require, to diſcharge all the Penalties and Incapacities, of a Popiſh Recuſant convict, as appears plainly by peruſing the ſeveral Acts relating to that Matter; and the Lords will always be tender of putting greater Hardſhips on proteſtant-Diſſenters than Papiſts.

'That no Compariſon ought to be made between the Penalties the Law had laid upon Papiſts for holding of Offices of Truſt, without taking the Teſt and receiving the Sacrament, and the Penalties to be laid upon Occaſional Conformity, for holding their Offices after they have been at a Conventicle.

'This Difference of Puniſhment, that ought to be obſerved between theſe two, is not upon the account that the Errors of the one are much greater than the Errors of the other, how true ſoever that is; but becauſe the one depend upon a foreign Power, and are ſubject to it: So the Nation is really in danger if ſuch Men ſhould hold Employments, who muſt be looked on as public Enemies, and as Perſons who receive Directions from an Authority that we are ſure is ever contriving our Ruin; but no ſuch Danger can be apprehended from Men who have no other Strength than what they have among ourſelves, which we are ſure can no way be compared to the Strength of the Eſtabliſhed Church.

'As to the Occaſional Conformity, it will appear no ſuch formidable Thing, if we conſider what the Senſe both of the

the Church of England, and of the Church of Rome was, of this Matter, upon other Occaſions. Anno 1 Ann. 1702.

'In the Beginning of Queen Elizabeth's Reign, the Reformation and the Liturgy were put on a foot, to bring over the whole Nation, that had then a Leaven of Popery, to concur in it; it had this Effect, all the Papiſts of England came to Church, and were Occaſional Conformiſts: Yet the Church of England was not uneaſy at this; they complained of no Danger from it. But who was ſenſible of it? It was the Pope, and he was in the right, as to his own Intereſt; for he ſaw what in time that Occaſional Conformity would grow to, and therefore he put a Stop to it, and by a Bull condemned it. And indeed the Church of Rome has ſhewed by the Methods of all their Miſſions, that they apprehend no Danger, but great Advantage, from any Step of the Occaſional Conformity of Proteſtants. They accept of any thing, and encourage every thing of that kind; and we have all ſeen, by the fatal Effects of their Practice, that they are in the right, and gain their Ends by it.

'As for the Clauſes about the foreign Proteſtants, there is great reaſon to give them all juſt Encouragement; for as they have brought among us many new Manufactures, ſo they have carried them ſo far, that of late Years we have exported to the Value of a Million of Woollen Manufactures, more than was done in King Charles's Reign, before they came among us; and the putting them under Apprehenſions or Diſcouragements, may be a Means to drive them to a Country where they are ſure of an entire Liberty.

'The Book that goes under the Name of Mr. De Wit ſhews, that the Dutch reckon that the Woollen Manufactures can never have ſuch a Settlement among us as with them, becauſe they who muſt work them, cannot have ſo entire a Liberty of Conſcience here as there: We have felt the happy Effects of the Liberty granted them in the laſt Reign, and it is to be hoped, that nothing will be done in this to impeach that, or to raiſe Apprehenſions and Fears in the Minds of Men that are ſo uſeful to us, in the moſt important Article of our Trade.

'As to the Clauſe concerning Univerſities, we are not to conſider the Danger they may be in under our preſent Circumſtances, but what may happen in another State of things. It is not ſo long, ſince we ſaw what Advantages were like to be taken againſt thoſe Learned Bodies, if there had been ſuch a Law to furniſh thoſe that were troubling them without any Reaſon or Pretence, with the Handle that this Bill might have given them without this Clauſe; and therefore the Lords think they are too much indebted to thoſe great

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Foundations, not to take care of them, and think themſelves bound to ſecure them, even from remote and poſſible Dangers; beſides that, the Vice-Chancellor and Heads of Houſes, being Men often of great Dignities and Preferments, may by a ſevere Proſecution be ruined, unleſs ſecured by a Clauſe.

'As for the Clauſe concerning thoſe Societies that are engaged in taking care of the Poor; the Nation, and this City in particular, has ſeen ſuch good Effects of their Care and Induſtry, that it cannot ſeem reaſonable to put any Diſcouragement upon them. How many poor Children do they take care of? They are by their means clothed and taught, and bound out to Trades; and if ſome miſled People join their Aſſiſtance and Charity to ſo great a Work, ſhall they be hindered from it, or puniſhed for it, if they have been ſo far miſtaken as to be at a Conventicle? But this Clauſe has no relation to endowed Hoſpitals which are under peculiar Statutes, and to which none of theſe People have any Acceſs: The Law has taken care of theſe, and ſecured them; and this Clauſe relates only to free and voluntary Societies, for ſuch Charities, which the Lords do not think fit to put any Reſtraints upon, or to bar any from coming into them.'

'The Managers for the Commons, by way of Reply to theſe Arguments urged by the Lords, ſaid,

'That ſeveral of the Lords Arguments were againſt the Bill.

'That the Lords had agreed to the greater Part of this Bill, and therefore ſhould confine themſelves. and ſpeak only to their own Amendments.

'That no time could be more ſeaſonable for this Bill, than the preſent; becauſe the Church was now in no danger of Popery, or of Fanaticiſm: But good Laws are to be made for Poſterity, and may be obtained moſt eaſily in the beſt Reigns.

'That the Right of Election of Members to ſerve in Parliament, is in thoſe that are concerned in the Government of Corporations, and if they ſhould by this Bill be turned out of their Employments, and conſequently loſe their Votes in the Elections; yet it cannot be ſaid they loſe their Birth-rights, becauſe no Man is born a Magiſtrate.

'That the Commons Penalty bears a juſt Proportion to the Offence, and that all above one hundred Pounds is for an obſtinate perſiſting in the Crime.

'That the Offender cannot be guilty through Inadvertency, he muſt offend knowingly and willingly.

'That the Teſt-Act gives five hundred Pounds, a much greater Penalty than that in this Act, to the Informer; beſides that Act brings the Offender under very great Diſabilities.

'That

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'That an innocent Man is no more ſecure under the Teſt-Act, than under this Bill; the Queſtion muſt be always upon his Acting or not Acting, which does not depend upon the Record; and a very violent Proſecution has been known within a few Years againſt an Alderman of Worceſter, a conſtant Conformiſt, only upon a Nicety, and where there has been no Fault in the Party.

'That the Trial muſt be by a Jury, not in a ſummary Way before a Juſtice of the Peace, as in ſome of our penal Laws.

'That it was very plain, good Proteſtants might be affected by Proſecutions upon the Teſt-Act.'

'Then their Managers left the Bill with the Lords, and ſaid, they hoped the Lords would not let the Public loſe the Benefit of ſo good a Law.'

'The Reſult of all was, that both Houſes adher'd, and ſo the Bill was loſt.'

The Thanks of the Houſe given to the Duke of Ormond, Lord Marlborough, and Sir George Rooke.

During this Interval the Houſe *Reſolv'd Nem. Con.* to give their Thanks to the Duke of Ormond, Sir George Rooke, and the Earl of Marlborough. Which was done accordingly: To the Lords Ormond and Marlborough, by a Committee appointed for that Purpoſe; and to Sir George Rooke from the Chair, he being in his Place. The Anſwer of the Duke of Ormond was to this purpoſe:

'That it was the greateſt Honour which could be given a Subject. That as for his part, he had done nothing, but what was his Duty: That all the Troops under his Command behav'd themſelves very gallantly; and he deſir'd to expreſs his utmoſt Thanks for the Honour the Houſe had done him.'

The Earl of Marlborough expreſs'd himſelf on the ſame Occaſion as follows:

'That nothing could add to the Satisfaction he took in the Queen's moſt gracious Service, but the obliging and favourable Senſe which that Houſe was pleaſed to expreſs of them, (his Endeavours perhaps) of which Honour, no Man could be more truly ſenſible than himſelf. That, our Succeſs was chiefly to be imputed to God's Bleſſing upon her Majeſty's happy Conduct, and the great Bravery of her own Troops, and thoſe of her Allies

The Speaker's Speech to Sir George Rooke, and his Reply are as follow:

The Speaker gives the Thanks of the Houſe to Sir George Rooke.

'Sir George Rooke, you are now return'd to this Houſe, after a moſt glorious Expedition; her Majeſty began her Reign with a Declaration that her Heart was entirely Engliſh, and Heaven hath made her triumph over the Enemies of England: For this, Thanks have been returned, in a moſt ſolemn manner, to Almighty God; there remains yet a Debt

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of Gratitude to thoſe who have been the Inſtruments of ſo wonderful a Victory, (the Duke of Ormond, and yourſelf, who had the Command of the Sea and Land-Forces.) In former times, Admirals and Generals have had Succeſs againſt France and Spain alone, but this Action at Vigo hath been a Victory over them confederated together: You have not only ſpoiled the Enemy, but you have enrich'd your own Country; common Victories bring Terror to the Conquer'd, but you brought Deſtruction upon them, and additional Strength to England: France had endeavour'd to ſupport its Ambition by the Riches of India; your Succeſs, Sir, hath only left them the Burden of Spain, and ſtript them of the Aſſiſtance of it; the Wealth of Spain and Ships of France, are by this Victory brought over to our juſter Cauſe. This is an Action ſo glorious in the Performance, and ſo extenſive in its Conſequence, that as all Times will preſerve the Memory of it, ſo every day will inform us of the Benefit.

'No doubt, Sir, but in France you are written in remarkable Characters in the Black Liſt of thoſe who have taken French Gold; and 'tis Juſtice done to the Duke of Ormond, and your Merit, that you ſhould ſtand recorded in the Regiſters of this Houſe, as the ſole Inſtruments of this glorious Victory; therefore the Houſe came to the following Reſolution.'

Reſolved, Nemine Contradicente, That the Thanks of this Houſe be given to the Duke of Ormond, and Sir George Rooke, for the great and ſignal Service performed for the Nation at Sea and Land: 'Which Thanks I now return you.'

To which Sir George Rooke anſwered in the following Terms:

Sir George's Anſwer.

'Mr. Speaker, I am now under a great Difficulty how to expreſs myſelf upon this very great Occaſion; I think myſelf very happy, that in Zeal and Duty to your Service, it hath been my good Fortune to be the Inſtrument of that which may deſerve your Notice, and much more the Return of your Thanks. I am extremely ſenſible of this great Honour, and ſhall take all the Care I can to preſerve it to my Grave, and convey it to my Poſterity without Spot or Blemiſh, by a conſtant Affection and zealous Perſeverance in the Queen's and your Service. Sir, No Man hath the Command of Fortune, but every Man hath Virtue at his Will; and though I may not always be ſucceſsful in your Service, as upon this Expedition, yet I may preſume to aſſure you, I ſhall never be the more faulty.

'I muſt repeat my Inability to expreſs myſelf on this Occaſion; but as I have a due Senſe of the Honour this Houſe hath been pleaſed to do me, ſo I ſhall always retain a due

and grateful Memory of it: And though my Duty and Allegiance are ſtrong Obligations upon me to do my beſt in the Service of my Country, yet I ſhall always take this as a particular Tie upon me to do Right and Juſtice to your Service upon all Occaſions.' Anno 1 Ann. 1702.

During this Interval, likewiſe, Mr. Colepepper, who delivered the famous Kentiſh Petition, and was under Proſecution for the ſame, petitioned the Houſe, that Proceedings might be ſtopp'd; upon which he was call'd before the Houſe, and being ask'd, whether he was ſorry for the ſeveral ſcandalous, and ſeditious Practices by him acted againſt the Honour and Privileges of that Houſe, againſt the Peace of the Kingdom in general, and the Quiet of his own Country in particular: He reply'd, he was ſorry. Upon which, a Reſolution paſs'd to addreſs the Queen to ſtop Proceedings, according to the Prayer of the ſaid Petition. Mr Colepepper's Petition.

About the ſame time the Queen went to the Houſe of Lords, and gave the Royal Aſſent to *An Act for granting to her Majeſty a Land-Tax*: And the Queſtion being put the ſame day in the Houſe of Commons, whether Prince George's Servants ſhould be capacitated to ſit in Parliament, it was carry'd in the Affirmative by a great Majority. Then Sir Edward Seymour mov'd for bringing in a Bill, *For Reſuming all Grants made in King William's Reign*; which being carried by a Majority of one hundred and eighty Voices againſt ſeventy eight, Mr. Walpole mov'd, That all the Grants made in the Reign of the late King James ſhould be reſum'd likewiſe, which paſs'd in the Negative. Sir John Holland made a Motion for bringing in a Bill, *For the more free and impartial Proceedings in Parliament, by providing that no Perſon whatſoever in Office or Employment ſhould be capable of ſitting in Parliament*, which paſs'd alſo in the Negative. But in Lieu of it, a Bill was brought in, and carry'd, *For the more free and impartial Proceedings in Parliament, by Providing, that no Perſon ſhall be choſen a Member, but ſuch as have a ſufficient Real Eſtate.* The Land-Tax Bill paſs'd. Motions for reſuming Grants. A Place-Bill mov'd for, and over-rul'd.

In the Beginning of January, Her Majeſty ſent the following Meſſage to the Houſe:

'That her Majeſty having received ſeveral Letters from the 'States-General, as alſo ſeveral Memoirs from their Ambaſ- 'ſadors, ſetting forth the great Apprehenſions they lie under 'from the extraordinary Preparations of France, &c and 'the Neceſſity of making an Augmentation of the Forces of 'England and Holland, as the only Means to prevent the 'Ruin that threaten'd them, was pleaſed to propoſe ſome Ex- 'pedients to the States-General, which ſhe hoped might 'have been of ſome Advantage to the common Intereſt, &c. 'But thoſe Expedients not having produced the Effects ſhe 'hoped The Queen's Meſſage to the Commons.

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'hoped for, and the States-General having renew'd their 'Applications to Her Majeſty, with more Earneſtneſs than 'before, to aſſiſt them, in this time of their Danger, with 'an Augmentation of her Forces; Her Majeſty had com-'manded the ſaid ſeveral Letters, &c. to be tranſmitted to 'them, that they might the better judge of the Danger 'which threaten'd them.

'To which was added, That Her Majeſty conceived this 'Matter to be of great Conſequence, as to acquaint them 'with the preſent State of it, that ſhe might have their Ad-'vice upon it; not doubting but that they would take ſuch 'Meaſures upon this Occaſion, as may be for Her Majeſty's 'Honour and Service, the Safety of her Kingdom, and the 'neceſſary Support of her Allies.,

In Compliance with this Meſſage, the Commons preſented the following Addreſs.

Commons Addreſs to the Queen.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, do beg leave to return your Majeſty our humble Thanks for your Majeſty's moſt gracious Condeſcenſion, in communicating to your Commons the ſeveral Memorials, Tranſactions and Letters that have paſs'd between your Majeſty and the States-General, for the Augmentation of your Majeſty's Forces, which are to act in Conjunction with the Forces of the States-General; by all which, your Commons are entirely convinced of your Majeſty's great Tenderneſs for your Subjects, in not laying a greater Burthen upon them than the Neceſſity of Affairs does abſolutely require.

'And your Commons do humbly aſſure your Majeſty, that in caſe your Majeſty ſhall think it neceſſary to enter into any further Negociation for encreaſing the Forces, which are to act in Conjunction with the Forces of the States-General (for whoſe Intereſt and Preſervation we ſhall always have the greateſt Regard) your Commons will enable your Majeſty to make good the ſame.

'And your Commons do further crave leave humbly to beſeech your Majeſty, that you will be pleaſed to inſiſt upon it with the States-General, that there be an immediate Stop of all Poſts, and of all Letters, Bills, and all other Correſpondence, Trade and Commerce with France and Spain, which your Commons are humbly of Opinion is ſo abſolutely neceſſary for carrying on the juſt and neceſſary War, wherein your Majeſty is engaged, to the interrupting the Trade of your Enemies, and reducing them to the greateſt Streights; that your Commons do humbly deſire, that England may not be charged with the Pay of ſuch additional Troops, but from the Day when ſuch Stop ſhall be made by the States General.'

To this Addreſs of the Commons, her Majeſty was pleaſed to make the following Anſwer: 'Gen-

'Gentlemen, It is with great Satisfaction that I receive this Addreſs, which enables me to join with the States-General in augmenting our Forces, according to their Deſire: I make no doubt but the Condition you mentioned will be approved, ſince it is abſolutely neceſſary for the Good of the whole Alliance; and I ſhall this Night ſend Directions to my Miniſter in Holland to concur with the States in providing the Troops accordingly'. Anno 1 Ann. 1702. Queen's Anſwer.

Among the moſt material Tranſactions of this Seſſion we muſt range what follow'd in the Houſe, after the Commiſſioners for public Accounts had delivered in their Report: For they having made very ſevere Obſervations on the Conduct of the Earl of Ranelagh, as Pay-Maſter of the Army, and his Lordſhip's Anſwer not being deemed ſatisfactory, they firſt reſolv'd, That his Lordſhip had given great and unneceſſary Delays in his Proceedings before the Commiſſioners; and, after both Parties had been heard, *Nem. con.* that it appear'd to them, that the ſeven Commiſſioners had had very good Grounds for making their Obſervations in their Narrative or Repreſentation laid before the Houſe; That all Money iſſued to the Pay-Maſter General of the Army, ought to be applied to the Uſe of the Army and Forces only, and to no other Purpoſe whatever. That all Privy-Seals, Orders of the Treaſury and other Warrants to the Pay-Maſter of the Army, to apply the Money in his Hands, to other than the Uſe of the Army and Forces, were illegal and void. That all Privy-Seals, or Warrants to the Auditors of the Impreſt to paſs Accounts without proper Vouchers, or to make any Allowances, other than according to the Law and Courſe of the Exchequer, were illegal and void. That the Seven Commiſſioners had made good their Allegations, &c. And laſtly, That it appeared to the Houſe, that the Pay-Maſter had miſapplied ſeveral Sums of the public Money. Proceedings againſt the Lord Ranelagh.

The Conſequence of all which was, that the ſaid Earl loſt his Place, and was expell'd the Houſe.

They likewiſe reſolv'd further on the ſaid Report, That Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, had neglected his Duty, and was guilty of a Breach of Truſt, in not tranſmitting the Impreſt Rolls half-yearly to the King's Remembrancer, &c. and that an Addreſs be preſented to her Majeſty, that ſhe would be pleas'd to give Directions to the Attorney-General to proſecute him for the ſaid Offence. Which ſaid Addreſs being preſented accordingly, the Queen ſaid in Anſwer, 'I will ſend to the Attorney-General, and give him my Directions purſuant to this Addreſs.' And Lord Hallifax.

The Courſe of theſe Proceedings drew the following Meſſage from the Lords: Meſſage from the Lords thereon.

'That the Lords have appointed a Committee to conſider of

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of the Obſervations in the Book of Accounts laid before them by the Commiſſioners of Accounts, the 15th of January, and alſo thoſe deliver'd the 2d Inſtant from the ſaid Commiſſioners: That the Committee met yeſterday Morning, and have proceeded upon the firſt Obſervation, and the additional Obſervations relating to the Auditor of the Receipt of the Exchequer. And thoſe Commiſſioners being Members of this Houſe, the Lords do deſire, that this Houſe will give leave that thoſe Commiſſioners, or ſome of them, ſhould attend the ſaid Committee to-morrow, at ten of the Clock in the Forenoon.'

Upon this, the Commons appointed a Committee to inſpect the Lords Journals, the principal Part of whoſe Reports, as delivered by Col. Granville, is contained in the following Tranſcripts therefrom.

Report from the Lords Journals.

Feb. 5. His Grace the Duke of Somerſet reported from the Lords Committees, appointed to conſider of the Obſervations delivered into this Houſe from the Commiſſioners of Accounts, That the ſaid Commiſſioners had not attended the Committee; but upon Conſideration of the whole Matter, the Committee had order'd him to report as followeth:

'The Committee appointed to conſider of the Obſervations in the Book of Accounts delivered into this Houſe the 15th Day of January laſt, and the 2d of this Inſtant February, have made ſome Progreſs in conſidering the ſaid Obſervations; and do humbly take leave to acquaint the Houſe, that they have examined into the firſt of thoſe Obſervations; and alſo the further Obſervation delivered into this Houſe the 2d Inſtant, relating to the tranſmitting the Ordinary Impreſt Rolls to the Queen's Remembrancer. They have inſpected ſeveral of the original Impreſt-Rolls, delivered into the Houſe by Mr. Barker, Deputy to Her Majeſty's Remembrancer. They alſo examined divers Officers of the Exchequer and others, upon Oath; and do find, that by the ancient and uninterrupted Courſe of the Exchequer, two Impreſt Rolls are to be made out for each Year; the one comprehending all Sums Impreſt from the End of Trinity-Term to the End of Hillary-Term; the other containing all ſuch Sums from that time to the End of Trinity-Term. Which Rolls are commonly call'd Half-Yearly Rolls, tho' improperly. They find, that by the ancient Courſe of the Exchequer, theſe Impreſt Rolls being made out by the Auditor of the Receipt, are to be delivered by him to the Clerk of the Pells; whoſe Duty it is to examine and ſign them; and this being done, the Clerk of the Pells delivers them to the Remembrancer.

This Uſage was by degrees diſcontinued, in the Reign of King Charles the Second; and the Remembrancer, or his Agent, uſed to come to the Office of the Auditor of the Receipt

ceipt, and take away the Impreſt Rolls from thence immediately. But in the time when the Earl of Rocheſter was Treaſurer, the ancient Uſage was reſtored, and he did order that the Impreſt Rolls ſhould be carefully examined and ſigned by the Clerk of the Pells, before they ſhould be tranſmitted to the Remembrancer. And accordingly, ſince that time, the ancient Cuſtom has been obſerved, as well before as ſince the Act of Parliament made in the eighth and ninth Year of his late Majeſty, for the better Obſervation of the Courſe anciently uſed in the Receipt of the Exchequer; (that is to ſay) the ſaid Half-Yearly Rolls, when made out and ſigned by the Auditor, have been by him tranſmitted to the Clerk of the Pells: And when the Clerk of the Pells has examined and ſigned them, he or his Deputy has delivered them to the Remembrancer. And this appears by the Remembrancer's Indorſement upon the Rolls. Anno 1 Annæ 1702.

The Committee finds, That Charles Lord Hallifax has been Auditor of the Receipt, from the End of November, 1699; ſince which time, ſix Impreſt Rolls have been tranſmitted to the Remembrancer, and there is a ſeventh Roll now under Examination of the Office of the Pells; and no other Roll can be prepared 'till after the 12th of this Inſtant February.

Upon the whole Matter, the Committee are humbly of Opinion, that Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office in tranſmitting the Ordinary Impreſt Rolls to the Queen's Remembrancer; according to the ancient Cuſtom of the Exchequer, and the Direction of the Act 8th and 9th *Gulielmi Tertii Regis*; intitled, *An Act for the better Obſervation of the Courſe anciently uſed in the Receipt of the Exchequer*: And that he hath not been guilty of any Neglect or Breach of Truſt upon that account.

Which Report being read; as alſo the Examinations taken upon Oath by the Committee; as alſo the Dates and Indorſements of the ſeveral Impreſt Rolls, delivered by Mr. Barker, Deputy to the Queen's Remembrancer: It was propoſed to agree with the Opinion of the Committee in this Report.

Then the Queſtion was put, Whether this Houſe will agree to the Opinion of the Committee in this Report?

It was reſolved in the Affirmative.

It is reſolved and declared by the Lords Spiritual and Temporal in Parliament aſſembled, That Charles Lord Hallifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office, in tranſmitting the Ordinary Impreſt Rolls to the Queen's Remembrancer, according to the ancient Cuſtoms of the Exchequer, and the Direction of the

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Act 8th and 9th *Gulielmi Tertii Regis*; entitled, *An Act for the better Obſervation of the Courſe anciently uſed in the Receipt of the Exchequer*: and that he hath not been guilty of any Neglect or Breach of Truſt upon that account.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Proceedings of the Houſe, and of the Committee, appointed to conſider of the Obſervations in the Book of Accounts, delivered into this Houſe the 15th of January laſt, and the 2d Day of this Inſtant February; and the Reſolution of this Houſe thereupon, ſhall be forthwith printed and publiſhed.

The Reſult of this Report was, that one Conference was deſired with the Lords by the Commons, and a ſecond with the Commons by the Lords; which laſt was afterwards reported to the Houſe as follows.

Conference thereon.

'Sir Joſeph Tredenham reports, That they had attended the ſaid Conference, and that the Lord Rocheſter managed the Conference on the part of the Lords, and acquainted them, that the Lords had deſired this Conference, for the Continuance of the good Correſpondence between the two Houſes: And that the Lords were not ſatisfied with the Reaſons given by this Houſe touching the Amendments to the Bill, entitled, *An additional Act for appointing and enabling Commiſſioners to examine, take and ſtate the public Accounts of the Kingdom*; and that they do inſiſt on all their Amendments to the Bill: And that in anſwer to their Reaſons given by this Houſe againſt the ſaid Amendments, the Lords gave the Reaſons following, *viz.*

'To the firſt and ſecond Reaſons offered by the Commons, the Lords anſwer, that the Commiſſioners named by the Commons having already made ſome Progreſs in the ſtating the Accounts, the naming of ſome new ones can be of no Prejudice to the perfecting that Work, the nature of taking and ſtating Accounts being ſuch, that new Men being joined with others, may be very capable of going on with the Remainder of that Work.

'The Lords do agree, that in the Act paſſed in the nineteenth of King Charles the Second, for taking Accounts, the Commiſſioners thereby conſtituted were named by the Commons; and the Lords did agree to it, both becauſe they approved of the Number and Quality of the Perſons, and becauſe they, being not Members of the Houſe of Commons, might always be ſent for at the Pleaſure of the Lords, to explain any Matters relating to thoſe Accounts. But the Lords having now had Experience by the laſt Act, which conſtituted no Commiſſioners but only ſuch as were of the Houſe of Commons, that their Lordſhips cannot have thoſe Commiſſioners at any time before them, to anſwer ſuch Queſtions,

Queſtions, or explain ſuch Doubts, as their Lordſhips may have Occaſion to enquire into; or even to intimate ſuch Points as ſeem to have been omitted, either in the Accounts or the Obſervations made thereupon; is one very great Reaſon why the Lords have found it neceſſary to name ſuch, in this Bill, as their Lordſhips may from time to time receive Informations from; without which, their Lordſhips examining into the Accounts will prove defective and dilatory. Anno 1 Ann. 1702.

'To the third and fourth Reaſons, their Lordſhips reply, that they are unwilling to enter into a Diſpute with the Commons, what is the proper Work of either Houſe, in relation to the granting Supplies to the Crown, or taking or examining the Accounts thereof; becauſe they would avoid any Controverſies of that kind with the Houſe of Commons, eſpecially at this time, having by Experience found that ſuch Debates have frequently been attended with ill Conſequences to the Public. But upon this Occaſion their Lordſhips conceive 'tis very plain, that ſince this Bill provides that the Accounts ſhall be laid before the Lords, it muſt be likewiſe owned, that it is the proper Work of this Houſe to examine them; and by no means can their Lordſhips acquieſce in the Reaſon given by the Houſe of Commons, that they being the Repreſentatives of all the Commons, no Commoner can be named, but by them; becauſe that would, by the ſame Parity of Reaſon, deprive their Lordſhips of the Power of aſſigning Council to any Man impeached by the Houſe of Commons, which in Caſes of Miſdemeanor they have always done; and by the late Bill for regulating Trials in Caſes of Treaſon, it was agreed by both Houſes, that Council ſhould be allowed in Caſes of Treaſon, even upon Impeachments; which Council muſt have been aſſigned by the Lords, and out of the Commoners.

'Laſtly, the Houſe of Lords cannot allow the Diſpoſition as well as granting of Money, by Act of Parliament, to have been ſolely in the Houſe of Commons: And much leſs can their Lordſhips conſent, that the Lords have not always had a Right of naming any Perſons to be employed in the public Service by Act of Parliament, and aſſigning them ſuch Salary for their pains, out of the Exchequer, as ſhould be agreed on in that Act of Parliament. And for theſe Reaſons their Lordſhips do inſiſt on all their Amendments to the ſaid Bill.'

And after Conſideration had of the ſaid Report, it was Reſolved, That this Houſe doth inſiſt upon their Diſagreement with the Lords in the Amendments to the ſaid Bill.

Reſolved, That a free Conference be deſired with the Lords upon the Subject-Matter of the laſt Conference.

A free Conference was accordingly held, and after that

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Two free Conferences reported.

a ſecond at the Requeſt of the Lords, a joint Report of which is as follows.

'Sir Joſeph Tredenham (according to the Order of the Day) reports the two laſt free Conferences with the Lords, as followeth.

'That the Conference was begun by the Managers for the Commons, who acquainted their Lordſhips, that the Commons had deſired this free Conference, to preſerve that good Correſpondence which had hitherto continued between the two Houſes.

'That they had ſolemnly and deliberately conſidered their Lordſhips Amendments to a Bill from the Commons, entitled, *An Act for appointing Commiſſioners to examine and ſtate the public Accounts of the Kingdom*, and the Reaſons which induced their Lordſhips to inſiſt on thoſe Amendments, but had not found them ſufficient to convince them; and they ſtill diſagree with the Lords in thoſe Amendments; and inſiſt on that Diſagreement.

'That the particular Knowledge the Commons had of the Commiſſioners named in the Bill, recommended them to their Nomination; and the Progreſs thoſe Commiſſioners have already made, in ſtating thoſe Accounts, hath juſtified the Commons good Opinion of their Abilities and Integrity.

'That to add new Commiſſioners, muſt of neceſſity delay the perfecting this Work, and would hazard the rendring the Bill (which continues only for a Year) ineffectual; for the Commiſſioners propoſed in their Lordſhips Amendments, will find themſelves by their Oath, and to anſwer their Lordſhips Expectations, obliged to inform themſelves, as well of what hath already undergone the Scrutiny of the preſent Commiſſioners, as in thoſe Particulars which ſhall hereafter become the Subject of their Enquiry, and that ſuch Retroſpect cannot be conſiſtent with the Diſpatch the Bill requires.

'That in anſwer to their Lordſhips Argument, derived from the Quality of the Commiſſioners named in the Bill, it was demanded, whether their Lordſhips could have any Aſſurance, that the Commiſſioners they propoſed will not be elected in the Vacancy of this, nor in any ſucceeding Parliament, wherein theſe Accounts may be required? Should that happen, their Lordſhips Amendments would not be uſeful to attain the End intended.

'That the Commons could not determine how far the Quality of the Commiſſioners named in the Act of Accounts, made in 19 Car. II prevailed with their Lordſhips in agreeing thereto. There was indeed no Member of the Commons of that Committee which met at Brook-Houſe with great Reputation; but how little they effected, how ſoon they were diſſolved, and how the Fruits of their Labours became abortive, is freſh in Memory. 'That

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'That from thenceforth the Commons, with better Succeſs, repoſed Truſts of this nature in their own Members: Of ſuch were the Committee for disbanding the Army, conſtituted 31 Car. II. Such are the Commiſſioners in the Act whereunto this Bill relates. It might with as good Logic be argued, that their Lordſhips agreed to thoſe laſt recited Acts, becauſe the Commiſſioners therein named were then Members of the Houſe of Commons; as that their Lordſhips were induced to an Agreement with the Commons in the Nomination of the Commiſſioners of Brook-Houſe, becauſe they were not of the Houſe of Commons. But upon this Variety in the Precedents, it may be more reaſonably inferred, that their Lordſhips have from time to time agreed to the Commiſſioners named by the Commons without reſpect to their Quality, and becauſe the Right of ſuch Nomination is in the Commons only.

'That the Meaſures by which both Houſes are to govern themſelves, are derived either from Precedent or Reaſon; their Lordſhips had not offered any Precedent in juſtification of inſiſting on theſe Amendments. If there be any Force in the Argument their Lordſhips derive from the Clauſe in this Bill, which provides, that the Accounts ſhall be laid before the King, and both Houſes of Parliament; it extends as well to veſt a Right in their Majeſties to nominate ſuch Commiſſioners, as in their Lordſhips, for it equally relates to both.

'That the Title and Deſign of the Bill, is to appoint Commiſſioners to examine, take and ſtate the public Accounts of the Kingdom, which, during the Seſſion of Parliament, is the proper Work of the Houſe of Commons; and no Inference can be more natural, than that it is in the Commons only to name Commiſſioners for the Exerciſe of that Authority, which is an Eſſential Part of their Conſtitution.

'That they deſired to know the End their Lordſhips would propoſe to themſelves by ſuch Enquiry, ſhould any Miſapplication of Money, or Default of Diſtribution, appear in theſe Accounts; their Lordſhips cannot take Cognizance thereof originally, nor otherwiſe even in their judicial Capacity, than at the Complaint of the Commons; ſhould a Failure or Want of Money appear, it is not in the Lords to redreſs it, for the Grant of all Aids is in the Commons only.

'That ſuch Enquiry can only be of uſe to the Commons to direct their future Supplies; and herein the laſt Commiſſion proved uſeful this Seſſion, the Commons ſupplying the Defects of the Fund upon the Expences in the Exciſe. If there be a Redundancy, the Commons only can apply it to the Charge of the enſuing Year: If there be diſcovered Miſapplications, or undue Preferences, the Commons only

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can frame the Accuſations, and lay them before their Lordſhips for Judgment.

'That the Managers added, that tho' this Bill be thought ſo uſeful at this time, as cannot be ſufficiently expreſs'd; yet nothing can be of greater Importance to the Public, than the maintaining the juſt and diſtinct Rights and Privileges, which each Eſtate of this Kingdom enjoys according to our Conſtitution: The Lords have many high Privileges to recommend their Lordſhips to the Favour of their Prince, and to ſupport their Figure in the Government; but the Commons have little beſides this one, of giving Money, and granting Aids. This is their undoubted and inherent Right, and therefore every thing that intrenches on that, the Commons may be allowed to be extremely jealous of.

'That the Liberty of naming Commiſſioners to take Account of the Public Money is a neceſſary Dependance of this Right, is evident, if their Lordſhips will conſider, that when any Aids are given, the Commons only do judge of the Neceſſities of the Crown, which cannot otherwiſe be made manifeſt to them, than by enquiring how the Money which hath been granted, and Revenue of the Crown is expended and applied. If the ſeveral Branches of the public Revenues are rightly conſidered, it will be found there is ſome particular Uſe to which they were originally aſſigned. There are ſome neceſſary Charges incumbent on the King in the Adminiſtration of the Government, which theſe Supplies are to defray; there is no Fund ſet aſide for Contingencies, no Proviſion made for Caſual and Incident Charges, but all extraordinary Expences require an extraordinary Supply: and when the Commons do think fit to erect ſuch a Commiſſion, the Expence made in the Execution of it muſt ſoon or late be drawn from the Purſe of the People. And ſince the Burden muſt inevitably light upon their Shoulders, they only can be Judges of the Weight which is fit to be impoſed, and to aſſign the Quantum of the Charge, which in this Caſe is proportionable to the Numbers of the Commiſſioners: ſo that this doth not only relate to this undoubted Right of the Commons, but doth finally end in raiſing of Money itſelf; which being a Privilege derived to them from their Anceſtors, and continued by the uninterrupted Practice of all Ages, 'tis a Right the Commons cannot depart from, but muſt for ever aſſert, ſupport and maintain.

'For that altho' the Lords, in the Preamble of the third Reaſon, ſeem to wave the Diſpute; yet having in their laſt Reaſon diſallow'd the Right of the Commons, in granting, limiting, and diſpoſing public Aids, the Commons think it of higheſt concern that this Affair, being the main Hinge of the Controverſy, ſhould be cleared and ſettled.

'That

'That the ancient manner of giving Aids was by Indenture, to which Conditions were ſometimes annexed; the Lords only gave their Conſent, without making any Alteration: And this was the continued Practice, until the latter end of Henry the Fifth, and in ſome Inſtances until Henry the Seventh. Anno 1 Ann. 1702.

'That in the famous Record, called, the Indempnity of the Lords and Commons, ſettled by the King, Lords and Commons, on a moſt ſolemn Debate in 9 Hen. IV. it is declared, that all Grants and Aids are made by the Commons, and only aſſented to by the Lords.

'That the modern Practice is to omit the Lords out of the granting, and name them Parties only to the enacting Clauſe of Aids granted to the Crown; to which their Lordſhips have always concurred, and on Conferences departed from their Attempts of petty Alterations, in Acts relating thereunto.

'That if then all Aids be by the Grant of the Commons, it follows that the Limitation, Diſpoſition, and manner of Account, muſt likewiſe belong only to them.

'And that altho' the Account then ſtated was ordered by 19 Car. II. and the Act to which this Bill relates, to be brought before their Majeſties and both Houſes of Parliament, this was a voluntary Act, and no Conceſſion of the Commons; for when their Lordſhips inſiſted upon it as of Right, in 31 Car. II. it was denied; and their Lordſhips, after ſeveral Conferences thereupon, withdrew their Amendment to that Bill.'

'That the Lords who appeared as Managers, and ſpoke at this Conference, were the Duke of Devonſhire, the Earl of Nottingham, and the Earl of Rocheſter.

'That the Subſtance of what was delivered by the Lords was to this effect; That their Lordſhips are willing at all times to meet with the Commons at Conferences and free Conferences, with an equal Deſire to continue a good Correſpondence between both Houſes; and have often condeſcended in ſome things, rather than to go on with further Debates: For tho' Conferences are the beſt way of reconciling any Difference between the two Houſes, yet they are Marks to the World that there is ſuch a Difference; and the Lords, even in this Caſe, would have condeſcended to depart from their Amendments, if they had not judged them to be of ſuch Conſequence, that they could not do it.

'That they took notice that it had been ſaid, That Debates of this kind ought to be grounded either upon Reaſon or Precedent; and they would endeavour to proceed upon both.

'That in the Act 31 Car. II. for Disbanding the Army, there

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there was no Direction to give any Account to either Houſe; and in the Act in the Year 1677. for the Building of Ships, there was no Account to be given to the Houſe of Lords: So that theſe Precedents, which the Gentlemen of the Houſe of Commons inſiſted upon, are not very applicable in the Matter of Debate, for in the laſt Act, and the Bill now depending, there is a Clauſe, That an Account ſhall be given to both Houſes.

'That the Lords had experienced by the laſt Act, That the Enquiry their Lordſhips are directed to take by this Act is defective and dilatory, for want of Commiſſioners that can attend them; and are able to explain ſuch things as they may have Occaſion to enquire into: And it cannot be imagined, that ever they can have that Satisfaction by writing to them, which they may arrive at by perſonal Examination.

'That it is very true, that in the Act of 19 Car. II. for taking the public Accounts, there were no Commiſſioners named by the Lords; but 'tis as true thoſe Commiſſioners were not Members of the Houſe of Commons; and they had no reaſon to diſagree in that Matter, becauſe this Objection did not lie againſt them.

'That their Lordſhips declined all Arguments concerning the Rights of the Commons in Granting, Limiting, and Diſpoſing public Aids, and therefore forbore to anſwer any Arguments of that kind; for that the Buſineſs now depending relates only to the taking Accounts, and directing ſuch Part of the Revenue as is not appropriated to the Payment of Salaries to ſuch Perſons as are employed therein, which their Lordſhips take to be quite another thing.

'That the Commons urge it with great Weight, if their Lordſhips could ſhew no Precedent for doing this: But if there be any ſuch Precedent, their Lordſhips did hope the Commons would allow them for Reaſons; for it is not to be ſuppoſed theſe Precedents were made without Reaſon.

'That the Commons inſiſt they are the Repreſentative of all the Commons of England; and that the Lords can name no Commoner a Commiſſioner, nor appoint Money to ſuch Perſons for theſe Services. It appears by the Journals of the Lords, and 'tis to be ſuppoſed in thoſe of the Commons likewiſe, That in the Poll-Bill, Auguſt 1660, the Lords named Commiſſioners for the Cinque-Ports, and expunged ſome in Kent and Suſſex; to all which the Commons agreed: In an Act 31 Car II. for Disbanding the Forces, the Lords added Bennet Lord Sherrard, and the Commons agreed to it.

'That in an Act made 12 Car. II. for ſpeedy Disbanding the Army, the Lords named Commiſſioners that were Peers, who were to be joined with Commiſſioners named by the Commons; and afterwards, in an Additional Act for Diſbanding

banding the Remainder of the Army, John Walker was added a Commiſſioner by the Houſe of Lords, and his Salary was twenty Shillings *per Diem*, which laſt Precedent comes directly up to be a Precedent in point; only in the Amendments now offered, there are four who are to have five hundred Pounds *per Annum* each, and he was one who had three hundred ſixty five Pounds *per Annum*. Anno 1 Ann. 1702.

'That it was inſinuated by ſome of the Gentlemen of the Houſe of Commons, That the End their Lordſhips could propoſe to themſelves by ſuch an Enquiry, muſt be either to diſcover what Offences have been committed in the Miſapplication, or whether there be a Failure of the Money for the Ends for which it was intended; and that to neither of theſe their Lordſhips Enquiry can be of Uſe: For as to the Puniſhment, it muſt be by Impeachment; and if there be any want of Money, the Lords cannot come at it. This their Lordſhips look on as an Objection to the Clauſe itſelf, but not to their naming Commiſſioners, to ſatisfy their Lordſhips in relation to the Accounts.

'That there are other Uſes may be made of theſe Accounts; the Lords may have Leiſure to enquire into theſe Accounts, whilſt the Commons are employed on other weighty Occaſions; and the Lords may take notice, for there is an Account of it in the Printed Votes, licenſed by the Speaker, That the Commons have not made ſo great a Progreſs in thoſe Accounts as their Lordſhips have done; and ſhould the Lords diſcover Miſcarriages, they may order a Proſecution of them in the Exchequer, lay them before the Houſe of Commons, or repreſent the Matter to the King.

'That there are ſome Precedents in Richard II's time, and it ſeems to be implied in the Precedents quoted in the Year 1677, about the Act for Building thirty Ships, That the Houſe of Commons have not of themſelves a Right to take theſe Accounts, for the Diſpute, then, was not about the Commiſſioners, but the laying the Accounts before the Commons alone; for, had they Power to call for them themſelves, an Act would not have been neceſſary; and the Precedent of the Lords receding at that time ought not to be reckoned to their Diſadvantage, becauſe from their ſuſpending their Privileges at that time, which they did with a Proteſtation, and from the thirty Ships that were built thereupon, it is, that we ſit here in Safety.

'In that Diſpute it was acknowledged, That it was the inherent Right of the Lords to call for the Accounts; ſo that 'tis no extraordinary thing that the Commons have now done, for this Bill gives the Lords and Commons an equal Right to call for the Accounts: And ſince the Commons cannot call for theſe Accounts ſo well as by this Bill, where-

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in they have named Perſons, under their own Juriſdiction as Members of your Houſe, it is but reaſonable they likewiſe ſhould name ſuch Commiſſioners as they may have Authority to call upon; for the Commons will hardly allow them Authority to ſend for the Members of the Houſe of Commons.

'On the whole, ſince the Bill had allowed their Lordſhips to take the Accounts, their Lordſhips deſire to know what Reaſon there could be, why they ſhould not be allowed the proper Methods of coming at theſe Accounts.

'To this the Commons reply'd, That the Precedents in 1660, 31 Car II. and Additional Bill in 12 Car. II. were no Grounds for their Lordſhips inſiſting to add and appoint Commoners; becauſe in thoſe the Lords had the Conſent of the Commoners ſignified to their Lordſhips by their Repreſentatives in Parliament. But, the Lords have no Right to impoſe an Office or Burden upon any Commoner, without their own Conſent; and, in the Courſe of the Legiſlature, the Lords have no Means to know, neither hath a Commoner any way to ſignify his Conſent or Diſſent, but by his Repreſentatives in Parliament. To inſiſt to appoint Commoners, after their Diſſent is ſignified in the proper Parliamentary way, is to inſiſt upon a Right of appointing Commoners, and impoſing a Burden upon them without their Conſents; which their Lordſhips never pretended to, no more than the Commons to nominate and appoint Peers in any Commiſſions.

'That in the Aid given in the ſecond Year of their Majeſties Reign, the Lord Durſley was inſerted a Commiſſioner; in caſe the Lords had not ſignified his Diſſent, he had been a Commiſſioner; and yet that would not have been a Precedent of the Commons Right of appointing a Peer to be a Commiſſioner, and inſiſting upon it. But the Lords by Amendment left him out, and the Commons agreed to the Amendment, though in a Money-Bill; conceiving they had no Right to inſiſt upon naming a Peer without the Conſent of the Peers, who only can bind their own Members: Neither can the Peers pretend to a larger Right over the Commons.'

'That their Lordſhips in their Reaſons ſay, That if they may not nominate Commoners Commiſſioners, by Parity of Reaſon they may be deprived of aſſigning Council upon Impeachments for Miſdemeanour, and in Caſes of High-Treaſon, where Matter of Law appears.

'That the Commons conceive this is not a natural Conſequence: For in Caſes of Impeachment they act in their judicial Capacity; and the Law gives the Party accuſed a Right to have Council, and their Lordſhips aſſign Council, when the Party cannot get Council to aſſiſt him, and the Law

Law enables their Lordſhips to do it. But there is no Law, which entitles them to nominate Commiſſioners for paſſing Accounts. Anno 1 Ann. 1702.

'That their Lordſhips alledged, that in the Bill *for Regulating the Trial of Treaſon*, both Houſes agreed that their Lordſhips might aſſign Council in Caſes of Impeachment for High-Treaſon.

'That the Bill not paſſing, that cannot be urged as a Precedent.

'That as the Lords cannot ſupply the Want, that being the Act of the Commons, nor puniſh the Miſapplication till Complaint is made by the Commons; ſo neither can their Lordſhips acquaint the Commons at a Conference, that there hath been a Miſapplication of the Money; becauſe that were giving Judgment, before the Matter came judicially before them.

'That the Lords cannot puniſh a Commoner (except for Breach of their Privilege) without an Information made by the Commons.

'That ſince no Fruit can be had by their Lordſhips Enquiry, why ſhould they nominate Commiſſioners, not being their Repreſentatives?

'And that to inſiſt upon it at this time, is moſt unſeaſonable, when the Commons, for the Support of the Government, lay under the heavy Burden of ſo many Taxes; which Weight will be much encreaſed by being denied the Satisfaction of knowing how their Money is diſpoſed of, and having thoſe skreened from Juſtice, who miſapplied the ſame; which muſt neceſſarily happen, by denying to agree with the Commons.

'That in anſwer to what was ſaid by their Lordſhips, That in caſe of the building the thirty Ships, it was admitted their Lordſhips had a Right to take the Accounts; it was admitted, with this Diſtinction, That as to the Stating and Examining the Accounts, it belonged only to the Commons, but that the Lords claimed the Cognizance of the Accounts in their judicial Capacity, for their Information in Caſes of Miſdemeanour.

'That as to the Queſtion which their Lordſhips ask, *To what end are theſe Accounts to be laid before them?* to which there ſeems ſome Difficulty to make an Anſwer; the Commons cannot but obſerve from thence, Their Lordſhips Right to demand to have thoſe Accounts, is not very clear; for it is a ſtrange kind of Right, for which 'tis hard to give a Reaſon.

'Upon Conſideration whereof, it was *Reſolved*, That this Houſe doth adhere to their Diſagreeing with the Lords to the Amendments made by the Lords to the Bill, entitled

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An Additional Act for appointing and enabling Commiſſioners to examine, take and ſtate the public Accounts of the Kingdom: And that this Houſe doth adhere to the Bill, as it was ſent up from this Houſe.'

The day before this laſt Conference was reported, the Houſe laid the following Repreſentation before her Majeſty.

Commons Addreſs to the Queen about the public Accounts, &c.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, (being deeply ſenſible, that notwithſtanding the immenſe Sums which have been raiſed for the Service of the late War, the Nation ſtill labours under a vaſt Debt of many Millions of Money) do think it our indiſpenſible Duty to lay before your Majeſty the unhappy Cauſes and Inſtruments, which appear to us, to have brought this heavy burden upon your People, not doubting but your Majeſty will be graciouſly pleaſed, in your great Wiſdom and Goodneſs, to give ſuch effectual Orders, that neither any indirect Practices ſhall be ſuffered, nor any Perſons entruſted with the Adminiſtration of the public Affairs, who have been the Authors of all our Miſeries.

'We therefore humbly crave leave to repreſent to your Majeſty, that during the ſaid War, which was carried on in Defence of the Proteſtant Religion, and the Liberties of Europe, againſt the common Enemy of both, and therefore chearfully ſupported by the People of England; yet, even then, when the great Neceſſities of the Kingdom did require a more than ordinary Frugality, there appears to have been a general Miſmanagement of the public Revenue, which was principally owing to ſome of thoſe great Officers of the Treaſury, who, being more intent on their own private Profit, than the due Execution of their public Truſts, did neither diſcharge the Duty of their own Places, nor take care that the ſub-ordinate Officers ſhould diſcharge theirs.

'And we can attribute it to no other Cauſe than this Remiſſneſs in the Treaſury, that many Receivers in the ſeveral Counties of England and Wales, made ſo long and unneceſſary Delays in their reſpective Payments into the Exchequer, of the Taxes given by Parliament, and levied on your Majeſty's good Subjects, by which means they made unreaſonable Advantages to themſelves, whilſt the Public was forced to pay great Intereſt and large Premiums, not only for the want of their own Money, but, as we have great reaſon to believe, many times for the Loan of it; and ſeveral Receivers in ſuch intermediate Time have failed with conſiderable Sums in their hands, to the great Loſs and Damage of the Public.

'Your dutiful Commons do farther humbly repreſent to your Majeſty, That great Sums of Money have been borrow-

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ed, and divers Tallies with Intereſt ſtruck unneceſſarily upon the Aſſeſſments and other Parliamentary Aids, before the public Occaſions have required them; and this Practice hath been purſued, when Votes of Credit have been obtained, upon Repreſentations made to your Commons of very preſſing Neceſſities for the ſame: whereby many Officers of the Revenue, and their Friends, have had an Opportunity to receive great Sums for Intereſt, which did incur on ſuch Tallies before their Money was paid in, to the Uſe of the Public; for the Advantage of which Intereſt, we have alſo reaſon to believe, that many Accomptants (who have received from the Exchequer great Sums of Money for the Uſe of the Public) did induſtriouſly delay the Payment thereof to the Seamen and Soldiers, to whom it was due. And this ſeems to be the great Inducement, that made ſuch Accomptants truſt great Sums of the public Money in the hands of Goldſmiths and other Perſons, in order to make private Advantages of it, and lend it back to the Exchequer in other Perſons Names: All which tended to the great Damage of your Majeſty's good Subjects, to the manifeſt Wrong and Diſcouragement of the Seamen and Soldiers, and to the great Diſhonour of the Engliſh Nation. Anno 1 Ann. 1702.

'This evil Practice of ſtriking Tallies with Intereſt, before the Money was paid in, was alſo attended with another very great Inconvenience to the Public, that whenever the Nation had Occaſion for Ready-Money to anſwer the preſent Neceſſities of the Kingdom, many Perſons who advanced their Money upon Loan, knowing they ſhould have the ſame Advantages by Delay, as by Prompt-Payment, would not bring their Money into the Exchequer for ſeveral Months after the Tallies were ſtruck; whereby the Government was forced, in the mean time, to pay exceſſive Rates for Stores and Proviſions for the Army and Navy, in regard the Merchants and Tradeſmen could have no Ready-Money for their Goods, but remote Tallies upon a large Diſcount.

'And by theſe and other undue Means, a very great Part of all the public Aids were ſquandered away in extravagant Intereſt, large Premiums, and in exceſſive Rates for Stores and Proviſions, which has been one of the great Cauſes that hath brought ſo heavy a Debt upon this Nation.

'But here we cannot, in Juſtice, omit to acknowledge the preſent good Management of the Treaſury, whereby, for the Honour of your Government, and the Advantage of the whole Nation, no unneceſſary Tallies with Intereſt are permitted to be ſtruck, nor more Money at any time borrowed, than the Neceſſities of the Nation do require; and Care is taken to ſupport the Credit of the Navy, Victualling, and other public Offices; and that Stores and Proviſions are in good

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good meaſure provided, with as great Advantage to the Public, as if the ſame were purchaſed with Ready-Money; which Frugality and good Management will be found to be one of the moſt effectual Means, to make your Majeſty's Government eaſy at home, and to carry on a vigorous War againſt the Common Enemy abroad.

'And we humbly crave leave farther to repreſent to your Majeſty, that though your Commons (who are always ready to ſupport the Dignity of the Crown) had amply provided all thoſe Sums, which (according to the largeſt Eſtimates laid before them) were thought neceſſary for the Occaſions of the Civil-Liſt, yet, over and above the ſaid Sums, and out of the Aids given by Parliament, (which by the Law of England are appropriated, and ought to have been employed in the common Profit of the whole Realm) many large Sums of Money, during the time of ſuch heavy Taxes upon the People, have been diverted under the Head of ſecret Services, and for Salaries, Bounties and Penſions to private Perſons, which (if proper to be paid at all) ought to have been ſupplied out of the Civil-Liſt: Nay, to ſo great a Degree did this Profuſeneſs extend, that ſeveral thouſand Pounds were paid out of public Aids, to purchaſe great Places for the late Earl of Sunderland, and the preſent Earl of Albemarle; ſo little could your Commons depend upon the Integrity of the public Officers, ſo little Regard was had by them to thoſe heavy Taxes the People lay under, that nothing leſs could ſecure the public Money from Miſapplications, than an expreſs Clauſe of Appropriation; which though not at all neceſſary for the Security of the public Money in general, but only to direct the Application of it in ſome particular Caſes, yet whenever your Commons made no ſuch particular Appropriation, they ſeldom fail'd to miſapply the public Money; which has been another great Cauſe of the heavy Debt that lies upon the Nation.

'And your Commons humbly crave leave farther to repreſent to your Majeſty, that the ancient and eſtabliſhed Method of accounting in your Majeſty's Exchequer, hath been in Manner following: that is to ſay, the Auditor of the Receipt is to make out and tranſmit the Impreſt Rolls half-yearly to your Majeſty's Remembrancer, in order to the Charging and Proſecuting the Accomptants; which being communicated to the Auditors of the Impreſt, they are to certify to the ſaid Remembrancer what Accomptants have not brought in, or proſecuted their Accounts, and thereupon the Remembrancer is obliged, every iſſuable Term, to iſſue out Proceſs againſt them, ſo that the Auditor of the Receipt is the main Wheel that ſets all the reſt a going; and when that great Officer is deficient in his Duty, it is not regular,

gular, nor indeed poſſible, for the reſt to proceed, but all Proceſs againſt Accomptants muſt be at a ſtand, and your Majeſty, and all your loyal Subjects muſt extremely ſuffer by it. And as to the Clerk of the Pells, he is to examine the Impreſt-Rolls, but the Auditor is obliged to tranſmit them to the Remembrancer; and when, thro' the Neglect or Corruption of the ſaid Officers, this ancient Method and Courſe of the Exchequer, was not ſo ſtrictly obſerved as it ought to have been, it was expreſly provided by an Act of Parliament, ſo lately made as in the eighth and ninth Year of the Reign of his late Majeſty King William of glorious Memory, and entitled, *An Act for the better Obſervation of the Courſe anciently uſed in the Receipt of the Exchequer*, in theſe Words following; that is to ſay, 'That the Auditor of the Receipt 'ſhall tranſmit the ordinary Impreſt-Rolls half-yearly to 'the King's Remembrancer, in order to the Charging or 'Proſecuting of Accomptants; and ſhall half-yearly, (to wit) 'at Eaſter and Michaelmas, make out and tranſmit to the 'ſaid Commiſſioners of the Treaſury, or the Treaſurer for 'the Time being, the Declaration of the Receipt, Iſſues and 'Remains at the Exchequer for every Half-year ſucceſſively; 'all which Matters and Things, and all other Matters and 'Things belonging to the Office and Duty of the Auditor 'of the Receipt, ſhall be faithfully and carefully done and 'perform'd by the Auditor of the Receipt for the Time 'being, in ſuch Manner as hath been anciently accuſtomed. 'And it is hereby farther provided, that the ſaid Auditor do, 'as frequently as he thinks fit, but at leaſt once in every 'three Months, carefully examine the Teller's Vouchers, for 'the Payments which he allows in his weekly Certificates.' But ſo it is (Moſt Gracious Sovereign) that notwithſtanding the plain and expreſs Words of the ſaid Statute ſo lately made, Charles Lord Hallifax, the preſent Auditor of the Receipt, though he was himſelf a Member of that Parliament, yet he hath taken ſo little Care to diſcharge the Duty of his Office, for the Intereſt of your Majeſty and the Security of the Public, that he hath not duely performed any one of the Particulars above-mentioned; and for want of examining the Tellers legal Vouchers, the ſaid Auditor manifeſtly deceived your Majeſty and the Public, by inſerting into the weekly Certificates of the Receipts, Iſſues, and Remains of the Exchequer, ſuch Sums of Money as were never actually and *bona fide* paid to the proper Parties, nor the Crown legally diſcharged thereof: And as to the Impreſt-Rolls, your Commons cannot without Grief obſerve to your Majeſty, that notwithſtanding there may be ſix Impreſt-Rolls now tranſmitted to the Remembrancer, yet it is well-known in the ſaid Office, that none of the ſaid Rolls from the eight and twentieth

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twentieth of June, one thouſand ſeven hundred, excluſive, were ſo tranſmitted, till very lately after the two and twentieth of January laſt, and after the ſaid Commiſſioners of Accounts had made their Enquiries into that Neglect by Order of your Commons; which being long after the Time they ought to have been tranſmitted, the ſaid Auditor was very far from doing his Duty in this Particular; and by reaſon of this Neglect, no Charge could be made in the mean time upon the reſpective Accomptants, who have received vaſt Sums of the public Money, which are unaccounted for to this day; and by this means, notwithſtanding the Impreſt Accomptants ought annually to account within three Months after the End of each Year, yet due Proceſs hath not, nor indeed could be iſſued out againſt them; and many Perſons who have received great Sums by way of Impreſt, from the Treaſurer of the Navy, and Pay-Maſter of the Army, are skreened from Proſecution, and not being ſet *Inſuper* in the Exchequer, cannot be regularly called to an Account for the Moneys by them received: And we have great reaſon to believe, that the Damage to the Public by this Neglect in the ſaid Auditor and his Predeceſſor, may amount to ſeveral Millions of Money, ſince by length of time (during which the principal Accounts have been neglected) many of the Perſons who received the ſaid public Moneys, are either dead, or become inſolvent; and the greater the Neglect of the former Auditor was, before the making the ſaid Statute, and before the preſent Auditor came into his Office, the greater ought to have been his Care to diſcharge his Duty, purſuant to that Law, which he himſelf was preſent at the making of, and which he has ſo highly neglected for the ſpace of three Years and upwards, ever ſince he came into the ſaid Office, to the great Detriment of your Majeſty, and all your loyal Subjects.

'And notwithſtanding it was alſo provided by another Act in the fourth Year of the late King William and Queen Mary, chap. 3. that in caſe any Officer of the Exchequer ſhould demand or take any Fee, Gratuity or Reward, or miſapply any of the weekly Sums therein mentioned, or ſhould not perform other things which by the ſaid Act they are required to perform, they ſhall forfeit their Offices, and be incapable of any Office or Place of Truſt, yet the ſaid Auditor hath acted contrary to the ſaid Statute, and hath received ſeveral Sums of Money to his own Uſe, contrary to Law and the Truſt repoſed in him: for all which, or any other Breaches of his Duty, as well as for thoſe formerly laid before your Majeſty, (for whoſe gracious Anſwer to our humble Addreſs on that Occaſion, we return your Majeſty our moſt humble and hearty Thanks) we earneſtly deſire your

your Majeſty will be graciouſly pleaſed to order your Attorney-General, effectually to proſecute at Law the ſaid Auditor of the Receipt: And thus, as we have ſeen great and good Actions rewarded by your Majeſty, we doubt not but to ſee all Deceits and Miſmanagements duly puniſhed; ſince your Commons can propoſe no Benefit to themſelves by all their Enquiries, unleſs the Laws are put in due Execution, and thoſe who have lived ſo long in defiance of them, come at laſt to feel their Weight. Anno 1 Ann. 1702.

'And by the Neglect of the ſaid Auditor and his Predeceſſor, the Auditors of the Impreſt, and the Remembrancer, and other Officers of the Exchequer, have not been able to proceed in their Duty, according to the Law and Courſe of the Exchequer, ſeveral of which Officers have been alſo negligent therein, whereby all the public Accounts of the Nation are far behind. The ſtate whereof (as delivered in to the ſaid Commiſſioners of Accounts) in the Particulars hereafter mentioned, is as followeth:

'The Earl of Ranelagh, late Paymaſter of your Majeſty's Forces, of one and twenty Millions and upwards, received in fourteen Year's time, hath paſſed no Account during all the late Reign, farther than the laſt of December, one thouſand ſix hundred and ninety, nor any other Account farther than March one thouſand ſix hundred and ninety two, which was not declared before the twentieth of June laſt, and even that upon Vouchers, which were not ſufficient for a legal Diſcharge.

'The Commiſſioners for the Sick and Wounded have brought in no Account during all the late Reign, and none ſince, any farther than the one and thirtieth of December, one thouſand ſix hundred and ninety.

'The late Treaſurer of the Chamber, Sir Rowland Gwyn, the late Maſter of the Robes, the Earl of Albemarle, and Mr Parkhurſt, Mr. Paſchall, and others, Commiſſioners of the Prize-Office, have delivered in no Accounts at all to the Auditors of the Impreſt.

'Jacob Vandereſche, Eſq; Paymaſter of his late Majeſty's Dutch Forces, hath received three Millions twenty five thouſand ſeven hundred fifty three Pounds nine Shillings and ſix Pence; which by computation is fifty two thouſand nine hundred and ſeven Pounds ſix Shilling and eight Pence Farthing, more than the Pay of thoſe Troops could have amounted to, if they had been always compleat; no Deductions made from them, and upon an Engliſh Eſtabliſhment, which all of them were not: and yet the ſaid Vandereſche hath paſſed no Account at all; and, tho' often ſummoned, hath never appeared before the ſaid Commiſſioners of the public Accounts, but ſtands indebted to the ſaid Troops in one hundred and twelve thouſand two hundred twenty nine

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Pounds nine Shillings and eight Pence; which is now demanded as an Arrear due to them, your Majeſty and the Public.

'The late Treaſurer of the Navy, of ſeventeen Millions and upward received, hath brought in ſeveral Accounts, to the laſt of December, one thouſand ſix hundred and ninety eight. His Account for the Year one thouſand ſix hundred and ninety two, was declared the third Day of July laſt; ſince which the Accounts of the three following Years only have been declared.

'The ſaid Treaſurer, by Mr. Papillion, Caſhier of the Victualling Office, hath paſſed no Account during all the late Reign, farther than the one and thirtieth of December, one thouſand ſix hundred and ninety ſix, which was not declared till the 19th of May, one thouſand ſeven hundred and one; and on the Foot of that Account he remained indebted five hundred thirty four thouſand twenty ſeven Pounds three Shillings and three Pence.

'And many other Accomptants, whom it would be too tedious to enumerate to your Majeſty, are either far behind in their Accounts, or have never brought in any Accounts at all; inſomuch that altho' forty five Millions five hundred ſixty eight thouſand ſeven hundred twenty five Pounds nineteen Shillings and two Pence Farthing (a Sum never known to be raiſed in very many Reigns before) hath been levied on your Majeſty's good Subjects, and iſſued out of the Exchequer to the ſeveral Paymaſters and Treaſurers of the Navy, Army and Ordnance, for the Service of the late War, between the fifth of November, one thouſand ſix hundred and eighty eight, and the eighth of March laſt paſt, (beſides the ſeveral Millions of Money raiſed for other public Uſes) yet the far greateſt part thereof hath not been accounted for to this day, to the great Diſſatisfaction of your People, and the great Diſhonour of the Nation.

'By theſe Neglects and Delays, all Accounts have been rendred ſo intricate and confuſed, that the ſeveral Accomptants have had great Opportunities of defrauding the Public, the Diſcovery of their Frauds has been made very difficult, and a hindrance thereby is given to the paſſing all ſucceeding Accounts.

'Hence it is that ſo many public Officers and Accomptants have raiſed great Eſtates to themſelves, at the Expence of the Public, when it is evident they have had no lawful Means to attain them; and ſeveral Perſons, whoſe Dury it was to hinder ſuch Exorbitancies, meaſuring their Requeſts rather by their own Avarice than their Merit, have obtained for themſelves Grants to ſuch a Value, as in foregoing Reigns have been eſteemed large Supplies towards great and public Services;

Services; which has been another great Cauſe of the Debt that lies upon the Nation. Anno 1 Ann. 1702.

'And your Commons do farther humbly repreſent to your Majeſty, that notwithſtanding ſuch vaſt Sums iſſued out to the ſaid late Paymaſter and Treaſurer, whereby your Commons had amply provided for all thoſe Services, and for the effectual carrying on the War againſt France; yet they find, to their great ſorrow, that not only the Officers, but the Seamen and Soldiers, who on all Occaſions have behaved themſelves bravely in defence of their Country, have not been paid during the late War, and that great Sums are ſtill owing to many of them: whereas if the public Money had been duly applied to the Uſes for which it was given by your Commons, inſtead of thoſe many Hardſhips that were endured by your Majeſty's moſt faithful Subjects and their Families, who ſerved ſo well in your Fleets and Armies, they would have had Juſtice done them during the laſt War, and been encouraged more chearfully to engage themſelves in this.

'But, inſtead of Juſtice, we have too much Reaſon to believe, that thoſe very Perſons, who by long and unneceſſary Delays have compelled them to accept of remote Tallies and Paper-Securities, have (amongſt others) taken Advantage of their Neceſſities, and employing Brokers to buy up thoſe Tallies and Securities at a low Rate, have afterwards paid themſelves with that ready Money which they ſhould at firſt have diſtributed to the Seamen and Soldiers.

'And ſuch was the myſterious Trade upon Tallies and Exchequer-Bills, which was formerly carried on by common Brokers, betwixt the Exchange and the Exchequer, and which did, as it were, prey upon the very Vitals of the Government; and ſo great gain was made thereby, at the Expence of the Public, that vaſt Sums of Money were employed in it, which did very much leſſen the true trading Stock of the Nation, whereby both the Exportation of the woollen and other Manufactures of this Kingdom, and the Importation of Bullion, and other Commodities of foreign Countries, to be manufactured in England, have been very much obſtructed, to the great Prejudice of your Majeſty's Cuſtoms, the loſs of the Balance of Trade, and the great Impoveriſhment of the whole Kingdom.

'And tho' the late Paymaſter and Treaſurer, by long and unneceſſary Delays in ſettling their Accounts, have in great meaſure prevented any Diſcovery of their undue Proceedings, and have endeavoured to protect themſelves from a juſt and fair Account to the Nation, by Privy-Seals and other unjuſtifiable Warrants, ſurreptitiouſly obtained for paſſing their Accounts, without proper Vouchers, contrary to

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the Law and Courſe of the Exchequer; yet your Commons, by the great Fidelity and Diligence of the ſame Commiſſioners for the taking, examining and ſtating the public Accounts of the Kingdom, have not only diſcovered the ſeveral Miſmanagements above-mentioned, but alſo ſome of the unwarrantable Proceedings uſed by the ſaid late Paymaſter of your Majeſty's Forces, by whom a conſiderable part of the Money which came to his hands, and which ought not to have been applied to any other purpoſe than the Payment of the Army, hath been diverted to his own and to other private Uſes; for all which, upon a full and fair hearing in his own Defence, he hath juſtly incurred the Cenſure of this Houſe, and been declared guilty of a high Crime and Miſdemeanor.

'And we find, to our unſpeakable Grief, whilſt his late Majeſty was engaged in the Proſecution of the glorious Deſign of preſerving the Proteſtant Religion, and the Liberties of Europe, and was thereby neceſſitated to commit the Care of the public Affairs in this Kingdom to particular Miniſters, (whereof none were more particularly entruſted in the chief Adminiſtration than thoſe who have been the great Cauſes of the unhappy differences among us:) This general Miſmanagement of the public Affairs did actually ſpread itſelf over the whole Kingdom, and ſeems to be owing (amongſt other things) to a Diſpoſition of Offices and Places, where Men were rather choſen for their Inclinations to ſerve a Party, than for their Qualifications to ſerve the Public.

'And theſe Men being conſcious to themſelves of the many Frauds and Offences committed againſt the Public, have no other hopes to ſhelter themſelves from Juſtice, than by taking away the Reputation of thoſe who deſire to do Right to their Country, by detecting their Iniquities; and being united in Guilt and Intereſt, they endeavour to amuſe and impoſe upon thoſe, whoſe Poſterity, we have too much Reaſon to fear, will groan under the ſad Effects of the wickedneſs of the one, and the too great credulity of the other.

'Theſe, dread Sovereign, are divers of the Cauſes of thoſe Miſchiefs your Kingdom ſuffereth by the late Miſmanagements, and which your loyal Commons could not omit thus humbly to repreſent in all dutiful Manner, without being unfaithful to your Majeſty, and to the Country by whom they are entruſted.

'From hence your Majeſty will be graciouſly pleaſed to take notice, that the great Debt which lies upon the Nation, and all the Arrears which are owing to your Majeſty's Forces, do not ariſe ſo much from the Deficiencies of the Funds, as for want of Care in the Management, and Fidelity in the Application of them.

'But

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'But ſince it hath pleaſed Almighty God to place your Sacred Majeſty on the Royal Throne of your Anceſtors, we have ſo entire a Confidence in your Majeſty's Goodneſs, that we can no longer fear to ſee the public Revenue miſmanaged or miſapplied, the Accounts neglected, or the Forces unpaid; and we chearfully depend on your Majeſty's Wiſdom, that all our Grievances, by your Grace and Favour, will in due time be redreſſed and removed, by puniſhing thoſe who have been the Cauſes of them, and by entruſting none in the Adminiſtration of the public Affairs, who, for their own private Advantage, have manifeſtly contributed to the Calamity of their Country.

'This (moſt gracious Sovereign) will be the only effectual Means to prevent the like Miſmanagement for the future; and thereby to make your Majeſty's Reign happy at home, and proſperous abroad.

'This will be the beſt means to enable and encourage your dutiful Commons to raiſe thoſe Supplies which ſhall be neceſſary to ſupport your Majeſty againſt all your Enemies.

'Thus we humbly crave leave, upon this Occaſion, to repeat our Aſſurances to your Majeſty, that we will always ſtand by and aſſiſt your Majeſty to the utmoſt of our power, in preſerving the eſtabliſhed Government both in Church and State, maintaining the ancient Glory of the Engliſh Nation, and defending the Liberties of Europe againſt the boundleſs Ambition of France.'

To this Addreſs her Majeſty made anſwer:

Queen's Anſwer.

'Gentlemen, the Repetition of theſe Aſſurances you give me in this Addreſs, of your Zeal for my Service, and the Good of the Kingdom, is very acceptable to me. I ſhall conſider the ſeveral particulars of it, and always have great regard to the Repreſentations of the Houſe of Commons, and the true Intereſt of England.'

The Miſunderſtanding between the two Houſes was continued March 10. by the following Meſſage.

Mr. Bertie, a Member, complain'd of by the Lords.

'Mr. Speaker, we are commanded by the Lords to acquaint this Houſe, that whereas a ſcandalous Paper reflecting on the Lord Chancellor and his Proceedings in the Court of Chancery, hath been complained of and read in the Houſe of Lords, of which their Lordſhips are informed upon Oath, that Mr. Robert Bertie, a Member of this Houſe, can give ſome Account; their Lordſhips do deſire, that for that purpoſe this Houſe will give leave for him to appear before the Lords.'

To which the Commons reply'd as follows.

'The Commons having received a Meſſage from your Lordſhips, wherein your Lordſhips did acquaint them, that a Scandalous Paper reflecting on the Lord Chancellor and his

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his Proceedings in the Court of Chancery, has been complained of and read in the House of Lords, of which your Lordships are informed upon Oath, that Mr. Robert Bertie, a Member of the House of Commons, can give some Account; Your Lordships do desire that for that purpose, the Commons would give leave for him to appear before your Lordships.

'The Commons have commanded us to acquaint your Lordships, that they not being informed by the said Message, of the particular Matters contained in the said Paper, or upon what Grounds your Lordships ask to have their Member appear before you, they desire your Lordships to let them know what the nature of that Account is, which is expected from their Member.'

What follows being necessary to clear up this remarkable Contest between the two Houses, is added in the same Order of Time, as it was published by Direction of the House.

Ordered, That the said Committee do draw up what is proper to be offered to the Lords, at a Conference upon the Subject-Matter of the Message from the Lords the 4th Instant, relating to the Commissioners of Accounts, and the Lords Proceedings in relation to the Observations of the said Commissioners.

Feb. 16. Colonel Granville reported from the Committee to whom it was referred to draw up what is proper to be offered to the Lords at a Conference, upon the Subject-Matter of the Message from the Lords the 4th Instant, relating to the Commissioners of Accounts, and the Lords Proceedings in relation to the Observations of the said Commissioners; that the Committee had drawn up the same accordingly, which they had directed him to report to the House, which he read in his Place, and afterwards deliver'd in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth:

'The Commons cannot comply with your Lordships Desires contained in your Message of the 4th Instant, because the Commons are still of the same Opinion as was delivered to your Lordships in February 1691, at a Free Conference upon the Subject-Matter of the Amendments made by the Lords to the Additional Bill for the appointing and enabling Commissioners to examine, take, and state the public Accounts of the Kingdom; when they desired to know the end your Lordships would propose to your selves, by an Enquiry into the public Accounts: For should any Misapplication of Money, or Default of Distribution appear in the Accounts, your Lordships cannot take Cognizance thereof originally; or otherwise, even in your Judicial Capacity, than at the Complaint of the Commons. And should a Failure or Want

Want of Money appear, it is not in your Lordſhips power to redreſs it; for the Grant of all Aids is in the Commons only. Or if there be any Surpluſage, the Commons only can apply it to the Charge of the enſuing Year. Anno 1 Ann. 1702.

'But ſhould the Commons give leave to the Commiſſioners to attend your Lordſhips, no Information they can give againſt any Perſon whatſoever, can entitle your Lordſhips either to acquit or condemn. Yet ſince this Meſſage, the Commons find in your Lordſhips Journals the following Reſolution: *viz.* 'That it is Reſolved and declared by the Lords Spiritual and Temporal in Parliament aſſembled, That Charles Lord Halifax, Auditor of the Receipt of the Exchequer, hath performed the Duty of his Office in tranſmitting the ordinary Impreſt-Rolls to the Queen's Remembrancer, according to the ancient Cuſtom of the Exchequer, and the Direction of the Act 8 and 9 *Guliel. Tertii Regis*, entitled, *An Act for the better Obſervation of the Courſe anciently uſed in the Receipt of the Exchequer:* And that he hath not been guilty of any Neglect or Breach of Truſt upon that Account.'

'Which looks to the Commons as if your Lordſhips pretended to give a Judgment of Acquittal, without any Accuſation brought before your Lordſhips, and conſequently without any Trial. And that which makes your Lordſhips Proceedings yet more irregular, it tends to prejudging a Cauſe which might regularly have come before you, either originally by Impeachment, or by Writ of Error from the Courts below. And therefore the Commons can ſee no uſe of this Reſolution, unleſs it be either to intimidate the Judges, or prepoſſeſs a Jury.

'But if your Lordſhips could have judged in this matter, it does not appear by your Lordſhips Journals, that you have had under Examination the reſpective Times of tranſmitting the ſeveral Impreſt-Rolls to the Queen's Remembrancer; without which, it is impoſſible to know whether the Auditor of the Receipt has done his Duty according to the Act of Parliament.'

The Lords Reply at the Conference, was contain'd in the following Votes.

'Feb. 18. It is reſolved and declared by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords have an undoubted Right, (which they can never ſuffer to be conteſted) to take Cognizance originally of all Public Accounts, and to enquire into any Miſapplication or Default in the Diſtribution of public Moneys, or into any other Miſmanagements whatſoever.

'It is reſolved and declared by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords in their Enquiry into the Examination of the Obſervations of the Commiſſioners

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Commiſſioners of Accounts, in relation to Charles Lord Hallifax, and in their Reſolutions thereupon, have proceeded according to the Rules of Juſtice, and the Evidence that was before them.

'It is reſolved and declared by the Lords Spiritual and Temporal in Parliament aſſembled, That the Commons in their Reaſons delivered at the laſt Conference, have uſed ſeveral Expreſſions and Arguments highly reflecting and altogether Unparliamentary, tending to deſtroy all good Correſpondence between the two Houſes, and to the Subverſion of the Conſtitution.'

In Anſwer, the Commons agreed to the following Heads to be offered at the free Conference.

'That no Cognizance the Lords can take of the public Accounts, can enable them to ſupply any Deficiency, or to apply any Surpluſage of the public Money.

'That the Lords can neither acquit nor condemn any Perſon whatſoever, upon any Enquiry ariſing originally in their own Houſe.

'That the Attempt the Lords have made to acquit Charles Lord Hallifax, Auditor of the Receipt of Exchequer, is Unparliamentary, and not warranted by any Precedent: And the Reſolution thereupon is plainly contrary to what appears on the Records themſelves.

'That the Conference deſired by the Commons, was in order to preſerve a good Correſpondence between both Houſes, by offering Reaſons to prevent the Lords from proceeding in a Caſe which they had no Precedent to warrant; and the Commons expreſſing the Conſequences they apprehended might follow from that Reſolution, was neither reflecting nor unparliamentary, or tending to deſtroy the good Correſpondence between the two Houſes, and much leſs to the Subverſion of the Conſtitution.

'That the Lords delivering at a Conference their Reſolutions inſtead of Reaſons, in anſwer to the Reaſons of the Commons, is not agreeable to the ancient Rules and Methods of Parliament, obſerved in Conferences between the two Houſes.

The Report of the ſaid free Conference as order'd to be enter'd into the Journals of the Houſe, is as follows.

'The Managers acquainted their Lordſhips, that the Commons had deſired this free Conference, in order to maintain a good Correſpondence between the two Houſes. And that, upon conſideration of the Reaſons offered by the Commons at the firſt Conference, and their Lordſhips Anſwer delivered at the laſt, they took the Points in difference to be, Firſt, that no Cognizance the Lords could take of the Public Accounts, could enable them to ſupply any Deficiency, or

or apply any Surpluſage of the public Money, in caſe any ſhould be found. And then your Managers went on to open the reſt of the Particulars which they had in direction from the Houſe to inſiſt on, which they did in the ſame manner as they appear by your Journal; but added, when they acquainted their Lordſhips, that the expreſſing the Conſequences which they apprehended might follow from their Reſolution, that it was not a Charge upon their Lordſhips, that they intended that Conſequence; but they would have been very glad their Lordſhips would have been pleaſed to have let them know what uſe was to be made of it, or what they intended by it: And concluded, that, if their Lordſhips did controvert any of thoſe Points, your Managers were ready to maintain them. Anno 1 Ann. 1702.

'The Lords made no anſwer to any of thoſe Particulars, ſave to the matter of the Reſolution relating to the Lord Halifax; upon which their Lordſhips did acknowledge, that they were no Court of Enquiry, to form any Accuſation: That their Proceedings in relation to that Lord, was no Trial; nor was their Reſolution any Judgment or Acquittal; but that he might ſtill be proſecuted as before: But that which gave occaſion to that Proceeding, was the Reſolution of the Houſe of Commons, which they found in the printed Votes, reflecting upon a Member of their Houſe; and thereupon they thought fit to give their Opinion, which they did in their legiſlative Capacity.

'To which the Managers replied, that their Lordſhips having, in their Reſolutions, declared, that they had proceeded according to the Rules of Juſtice, and the Evidence that was before them; the Commons could put no other Interpretation upon it, than that it was intended as a Judgment: And no Judgment could be made, where there was no Accuſation; and if it was not a Judgment, they could not imagine what it did tend to.

'As to their Lordſhips delivering their Opinion; the Managers obſerved, it was againſt the Rule of any Court, that any Judge whatſoever, ſhould deliver an Opinion in a Cauſe that might come before him; and this Matter might hereafter come judicially before their Lordſhips.

'And the Managers obſerved the great difference between the Reſolution of the Commons, and that of the Lords. The Vote of the Houſe of Commons was but in order to a Proſecution, which they can never Vote, without declaring the Crime; and they can never come to be Judges of it. The Houſe of Commons is the Grand Inqueſt of the Nation; and every Grand Jury that finds *Bills Vera* upon an Indictment, does by that declare the Man guilty. But the Lords have a Judicial Capacity; and their Reſolution before an

Anno 1 Ann. 1702.

Accuſation brought, is prejudging the Cauſe that may come regularly before them. And ſome of the Managers in ſpeaking to theſe Points, were frequently interrupted by their Lordſhips.

'As to the Obſervation the Commons made, that the Lords had not examined the reſpective Times of tranſmitting the Impreſt-Rolls to the Queen's Remembrancer; your Managers ſaid, that, as their Lordſhips Reſolution was no Judgment, ſo this Conference was no Tryal. But to ſhew the Miſtake of their Lordſhips Reſolution, they obſerved the Dates upon the ſeveral Impreſt-Rolls that had been tranſmitted to the Remembrancer; that they apprehended there were ſtill two wanting. That the three laſt that were tranſmitted, came not to the Remembrancer till January laſt, the two firſt on the 23d, the laſt on the 27th. The firſt of theſe three Impreſt-Rolls was Money impreſt to the 21ſt of February, 1700. and ſaid to be in the firſt Year of the Reign of Queen Anne; which ſhewed that that Roll was ſo far from being examined or tranſmitted in time, that it was not made up till ſince her Majeſty came to the Crown.

'That as the Cuſtom formerly has been, to ſet down the Time of the Examination of thoſe Rolls; ſince Mr. Charles Montagu came in to be Auditor, he ſet down the Month, but not the Day: And ſince the Lord Halliſax was Auditor, he had ſet down neither Month nor Day. And by his Example, on the three laſt Impreſt-Rolls the Clerk of the Pells had put down no time at all.

'To which a noble Lord in his own Defence replied, That the Lords Reſolution was well founded, ſince they had the Rolls themſelves before them, and Proof upon Oath; that by the Words of the Act, the Auditor was to tranſmit the Impreſt-Rolls to the Remembrancer Half-Yearly, according to the uſual Courſe of the Exchequer; which is eight Months, and four Months; that it was not his Duty to tranſmit them immediately to the Remembrancer; becauſe he was to ſend them to the Clerk of the Pells, who is to examine and ſign them. And it cannot be imagined, the Auditor ſhould be tied to a certain Time, to tranſmit the Rolls to the Remembrancer, becauſe they muſt firſt go through another hand; and he never took it, there was any Occaſion to put down the Time he examined them, for that would appear from the Time of the Delivery, and Date of the Roll.

'That there was one examined by the Clerk of the Pells, the 4th of July, and not delivered till the 23d of January; which he did not take to be the Auditor's Fault, but took it to be the Duty of the Clerk of the Pells to deliver them. That every body knew the great trouble had been given in his

as

as well as other Offices, by the Commiſſioners of Accounts. That no public Loſs had happened by not tranſmitting theſe Rolls; no Proceſs having been iſſued forth for many Years upon them. Anno 1 Ann. 1702.

'To this your Managers anſwered, That tho' Half-Yearly ſhould be taken for eight Months, and Four Months; yet by that they muſt be tranſmitted twice a Year; and that he had fail'd in his Duty in that reſpect.

'To conſtrue the ancient Courſe of the Exchequer, in the Act of Parliament, to be meant that the Clerk of the Pells ſhould tranſmit the Rolls; is a direct Contradiction to the Act, that ſays the Auditor ſhall do it. And the ancient Courſe of the Exchequer not having been obſerved, was the Occaſion of making that Law; and that they thought Laws were made to be obſerved. That indeed no Proceſs could iſſue, till the Rolls were tranſmitted; and poſſibly that might be the Ground the Accounts have been ſo long unpaſſed, to the prejudice of the Public. That his Lordſhip's Apprehenſion there was no Loſs to the Public, by not tranſmitting the Rolls, might probably be the Reaſon of his Lordſhip's neglecting his Duty.'

While theſe Diſputes between the two Houſes were in agitation, her Majeſty being deſirous to have an end put to their Sitting, ordered Mr. Secretary Hedges to acquaint the Commons, That ſhe deſired they would give all poſſible Diligence to the Buſineſs depending, her Majeſty finding it neceſſary for the public Affairs, to put an end to that Seſſion: Upon which they reſolved on an Addreſs to her Majeſty, humbly to lay before her, That they had already diſpatch'd all the neceſſary Buſineſs before them. The concluding Day at length came, (Feb. 27.) when her Majeſty went to the Houſe of Lords, and ſending for the Commons, was pleaſed to give her Royal Aſſent to the following public Bills, *viz. An Act for granting to her Majeſty ſeveral Subſidies for carrying on the War againſt France and Spain: An Act for granting an Aid to her Majeſty, by Sale of ſeveral Annuities at the Exchequer, for carrying on the War againſt France and Spain: An Act to enable her Majeſty to ſettle a Revenue for ſupporting the Dignity of his Royal Highneſs Prince George Hereditary of Denmark, in caſe he ſhall ſurvive her Majeſty: An Act for continuing the Duties upon Coals, Culm and Cinders: An Act for granting a Supply to her Majeſty, by ſeveral Duties impoſed upon Malt, Mum, Cyder and Perry: An Act for preventing Frauds in her Majeſty's Duties upon Stampt Vellum, Parchment and Paper: An Act for Advancing the Sale of the Forfeited Eſtates in Ireland, and for Veſting ſuch as remain unſold by the preſent Truſtees in her Majeſty, her Heirs and Succeſſors, for ſuch Uſes as the ſame were before Veſted in the ſaid Truſtees; and for the more effectual Selling and Setting the ſaid Eſtates to Pro-* The Royal Aſſent given to ſeveral Acts.

Anno 1 Ann. 1702.

teſtants, and for Explaining the ſeveral Acts relating to the Lord Bophin and Sir Redmond Everard: An Act for the Finiſhing and Adorning the Cathedral Church of St. Paul's, London: An Act for Explanation and making Effectual a late Statute concerning the Haven and Piers of the Borough of Great Yarmouth, and for Confirming the Rights and Privileges of the ſaid Borough: An Act for making the River Cham, alias *Grant, in the County of Cambridge, more Navigable from Hythe-Ferry to the Queen's-Mill in the Univerſity and Town of Cambridge: An Act for explaining of a Clauſe in an Act, made in the Seventh Year of his late Majeſty's Reign, relating to Borelaps, and to take off the Additional Subſidy upon Iriſh Linen: An Act for the better preventing Eſcapes out of the Queen's-Bench and Fleet Priſons: An Act for puniſhing of Acceſſaries to Felonies, and Receivers of ſtolen Goods, and to prevent the wilful Burning and Deſtroying of Ships: An Act for the better Repairing and Amending the High-ways from the North End of Thornwood Common to Woodford, in the County of Eſſex: An Act for continuing former Acts for exporting Leather, and for Eaſe of Jurors, and for reviving and making more effectual an Act relating to Vagrants: An Act for encouraging the Conſumption of Malted Corn, and for the better preventing the Running of French and foreign Brandy: An Act for Taking, Examining and Stating the Public Accounts of the Kingdom: An Act for enlarging the Time for taking the Oath of Abjuration, and alſo for Recapacitating and Indemnifying ſuch Perſons as have not taken the ſame by a Time limited, and ſhall take the ſame by a Time to be appointed, and for the farther Security of her Majeſty's Perſon, and the Succeſſion of the Crown in the Proteſtant Line, and for extinguiſhing the Hopes of the Pretended Prince of Wales, and all other Pretenders, and their Open and Secret Abettors: An Act for puniſhing Officers and Soldiers who ſhall mutiny and deſert her Majeſty's Service in England and Ireland, and for puniſhing Falſe Muſters, and for better Payment of Quarters in England: An Act for the more effectual preventing the Abuſes and Frauds of Perſons employ'd in the Working up the Woollen, Linen, Fuſtian, Cotton, and Iron-Manufactures of this Kingdom: An Act for raiſing the Militia of this Kingdom for the Year one thouſand ſeven hundred and three, notwithſtanding the Month's Pay formerly advanced be not repaid: An Act for Reviving and Continuing the late Acts, for appointing Commiſſioners to Take, Examine and Determine the Debts due to the Army, the Navy, and for Tranſport-Service; and alſo an Account of the Prizes taken during the late War: An Act to oblige Edward Whitaker to account for ſuch Sums of Public Money as have been received by him.* And to thirty-one private Bills. Which done, her Majeſty was graciouſly pleaſed to deliver herſelf to both Houſes, in the following Expreſſions:

'My

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Queen's Speech.

' My Lords and Gentlemen,

' I Return you My hearty Thanks for the great Diſpatch ' you have given to the Public Affairs in this Seſſion, ' which is an Advantage extremely material at all Times, ' and I hope we ſhall find the Fruits of it this Year in the ' Forwardneſs of our Preparations.

' I am to thank you, Gentlemen of the Houſe of Commons, in particular, for the Supplies with which you enable Me to carry on the War; it ſhall be my Care to have them ſtrictly applied to the Uſes, for which you have deſigned them, and to the beſt Advantage for the Public Service. You have repoſed great Confidence in Me by allowing ſo unuſual a Latitude, as you have in the Clauſe of Appropriation; I ſhall improve all Opportunities in the Uſe of it, for the Honour and true Intereſt of the Nation.

' I muſt further take notice to you, That the Readineſs you have ſhewn in the Proviſion made for the Prince, is a very ſenſible Obligation to Me.

' My Lords and Gentlemen,

' I deſire and expect from you, That you make it your Buſineſs in your ſeveral Countries to continue and preſerve the Quiet and Satisfaction of my Subjects: I hope ſuch of them as have the Misfortune to diſſent from the Church of England, will reſt ſecure and ſatisfied in the Act of Toleration, which I am reſolved to maintain: And that all thoſe who have the Happineſs and Advantage to be of the Church of England will conſider, That I have had my Education in it, and that I have been willing to run great Hazards for its Preſervation; and therefore they may be very ſure, I ſhall always make it my own particular Care to encourage and maintain this Church as by Law eſtabliſhed, and every the leaſt Member of it, in all their juſt Rights and Privileges; and upon all Occaſions of Promotions to any Eccleſiaſtical Dignity, I ſhall have a very juſt Regard to ſuch, as are eminent and remarkable for their Piety, Learning and conſtant Zeal for the Church; that by this, and all other Methods which ſhall be thought proper, I may tranſmit it ſecurely ſettled to Poſterity.

' I think it might have been for the Public Service to have had ſome further Laws for reſtraining the great Licence, which is aſſumed, of Publiſhing and Spreading ſcandalous Pamphlets and Libels; but as far as the preſent Laws will extend, I hope you will all do your Duty in your reſpective Stations to prevent and puniſh ſuch pernicious Practices.

' Above all other Things, I do recommend to you Peace and Union among ourſelves, as the moſt effectual Means

' that

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'that can be deviſed to diſcourage and defeat the Deſigns of 'our Enemies.

'I muſt not conclude without acquainting you, I have 'given Directions, That my Part of all the Prizes, which 'have been or ſhall be taken during this War, be applied 'entirely to the Public Service; and I hope my own Re- 'venue will not fall ſo ſhort, but that I may be able, as I 'deſire, to contribute yet farther to the Eaſe of my People.'

After which, the Lord-Keeper, by her Majeſty's Command, prorogued the Parliament to Thurſday, the 22d of April.

The third Seſſion of Queen Anne's firſt Parliament.

On the 9th of November, the Queen opened the Seſſions of Parliament with the following Speech:

Her Majeſty's Speech to the Parliament.

'My Lords and Gentlemen,

'I Have called you together as ſoon as I thought you 'could conveniently come out of your Countries, that 'no Time might be loſt in making our Preparations for car- 'rying on the preſent War, in which I do not doubt of 'your chearful Concurrence; ſince we cannot but be ſenſi- 'ble, that on the Succeſs of it depends our own Safety and 'Happineſs, and that of all Europe.

'I hope I have improved the Confidence you repoſed in 'me laſt Year, to your Satisfaction and the Advantage of us, 'and our Allies, by the Treaty with the King of Portugal, 'and the Declaration of the Duke of Savoy, which in a 'great meaſure may be imputed to the Chearfulneſs with 'which you ſupported me in this War, and the Aſſurance 'with which you truſted me in the Conduct of it: And we 'cannot ſufficiently acknowledge the Goodneſs of Almighty 'God, who is pleaſed to afford us ſo fair a Proſpect as we 'have now, of bringing it to a glorious and ſpeedy Con- 'cluſion.

'I muſt therefore deſire you, Gentlemen of the Houſe of 'Commons, to grant me ſuch Supplies as ſhall be requiſite 'to defray the Charge of the War in the next Year, with 'regard not only to all our former Engagements, but 'particularly to our Alliance lately made with the King of 'Portugal, for recovering the Monarchy of Spain from the 'Houſe of Bourbon, and reſtoring it to the Houſe of Auſtria: 'Which Treaty being in itſelf of the higheſt Importance 'imaginable, and requiring all poſſible Diſpatch in the Ex- 'ecution of it, has neceſſarily occaſion'd a great Expence 'even in this preſent Year, tho' not ſo much as it will re- 'quire, and for which, I hope, we ſhall be amply recom- 'penſed in the next.

'The

Anno 2 Annæ 1703.

'The Subſidies which will now be immediately requir'd for the Aſſiſtance of the Duke of Savoy, will likewiſe occaſion a farther neceſſary Charge.

'I muſt take notice to you, That tho' no particular Proviſion was made in the laſt Seſſion, either for the Charge of our preſent Expedition to Portugal, or for that of the Augmentation-Troops deſired by the States-General, yet the Funds given by Parliament, have held out ſo well, and the Produce of the Prizes has prov'd ſo conſiderable, that you will find the Public will not be in debt by reaſon of either of theſe additional Services.

'I may further obſerve to you, That tho' the Funds for Civil Government are diminiſh'd by the War, I have, in conjunction with the States-General, contributed out of my own Revenue towards ſome Public Services, and particularly the Support of the Circle of Swabia, whoſe firm Adherence to the Intereſt of the Allies, under the greateſt Preſſures, did very well deſerve our ſeaſonable Aſſiſtance: And I ſhall ſtill be careful not to engage myſelf in any unneceſſary Expence of my own, that I may have the more to ſpare towards the Eaſe of my Subjects.

'My Lords and Gentlemen,

'I heartily wiſh ſome eaſy and leſs chargeable Method could be found, for the ſpeedy and effectual Manning of the Fleet.

'I muſt alſo recommend to you, to make ſome Regulation for preventing the exceſſive Price of Coals. I have examin'd this Matter, and taken particular Care to appoint Convoys for that Service; but the Price has not been in the leaſt abated, notwithſtanding a very conſiderable Quantity has been imported ſince that Time: This gives great Ground of Suſpicion there may be a Combination of ſome Perſons to enrich themſelves by a general Oppreſſion of others, and particularly the Poor. 'Twill deſerve your Conſideration how to remedy this great Inconvenience.

'And in all your Affairs I muſt recommend to you as much Diſpatch as the Nature of them will admit: This is neceſſary to make our Preparations early, on which in great meaſure depends the good Succeſs of all our Enterprizes.

'I want Words to expreſs to you my earneſt Deſire of ſeeing all my Subjects in perfect Peace and Union among themſelves; I have nothing ſo much at heart as their Welfare and Happineſs: Let me therefore deſire you all, That you would carefully avoid any Heats or Diviſions that may diſappoint me of that Satisfaction, and give Encouragement to the common Enemies of our Church and State.'

On

Anno 2 Ann. 1703.

On the 11th the following Addreſs of the Houſe of Commons was preſented to her Majeſty.

Commons Addreſs to the Queen.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, do humbly return your Majeſty our moſt hearty Thanks for your Majeſty's moſt gracious Speech from the Throne.

'We are truly ſenſible of your Majeſty's earneſt Endeavours to bring the War to a glorious and ſpeedy Concluſion, of which your Majeſty has given us ſo fair a Proſpect by your great Wiſdom and Conduct, in engaging the King of Portugal and Duke of Savoy in your Alliance, for recovering the Monarchy of Spain from the Houſe of Bourbon, and reſtoring it to the Houſe of Auſtria.

'We do moſt gratefully acknowledge your Majeſty's ſingular Care in the good Management and Application of the public Money, whereby your Majeſty's Exchequer hath greater Credit in this ſo expenſive a War than was ever known in the moſt flouriſhing Times of Peace; and your moſt ſignal and unparallell'd Grace and Goodneſs to your People, in contributing out of your own Revenue towards the public Service, particularly Your Majeſty's moſt ſeaſonable Aſſiſtance to the Circle of Swabia.

'The many Bleſſings we enjoy under your Majeſty's moſt auſpicious Reign, and your tender Regard to the general Welfare and Happineſs of your Subjects, juſtly require our utmoſt Returns of Duty and Gratitude. And your Majeſty may be aſſured, that your faithful Commons will ſupport your Majeſty in your Alliances, and effectually enable your Majeſty to carry on the War with Vigour, to which nothing can more contribute than a firm Union among ourſelves: We therefore crave Leave further to aſſure your Majeſty, That we will, according to your Majeſty's Deſire, carefully avoid any Heats or Diviſions that may give Encouragement to the common Enemies of the Church and State.

To which her Majeſty anſwer'd.

Queen's Anſwer.

'I am well pleaſed with your Aſſurances of ſupporting 'me in the preſent War, and your kind Acknowledgments 'of my Endeavours to bring it to a happy Concluſion.

'You may aſſure yourſelves I ſhall always purſue the 'True Intereſt of the Kingdom, and omit nothing that may 'promote the general Welfare of my People.'

Proceedings on the Bill againſt Occaſional Conformity.

On the 25th of November, a Motion was made in the Houſe of Commons, for bringing in the Bill againſt Occaſional Conformity: Great Oppoſition was made to it; the Court was againſt it, but it was carried by a great Majority, that ſuch a Bill ſhould be brought in. So a new Draught was formed. In it, the Preamble, that was in the former Bill, was left out. The Number, beſides the Family, that made

made a Conventicle, was enlarged from five to twelve: And the Fine ſet on thoſe who went to Conventicles, after they had received the Sacrament, beſides the Loſs of their Employment, was brought down to fifty Pound. The following Speech was made by Sir John Packington on that Occaſion, and ſeems to contain the Senſe of the Majority of that Houſe. Anno 2 Annæ 1703.

Sir John Packington's Speech thereon.

'Mr. Speaker, Her Majeſty has been pleaſed in all her Speeches, to give us ſo many Aſſurances of ſupporting the Church of England as by Law eſtabliſhed; and alſo ſuch Inſtances of being punctual to her Promiſe in this Particular, that I think ſhe very juſtly deſerves the Title of Defender of the Faith. Her deſire to ſee this Bill ſucceed the laſt Seſſions of Parliament, was ſufficiently ſhewn by the Prince of Denmark's conſtant Attendance upon it; and I believe the Reaſon why ſome Perſons oppoſed it, was becauſe the Queen ſeemed to eſpouſe it.

'But pray, Gentlemen, let us conſider, how this Bill came to be loſt? Why, two or three noble Lords were by turns to be abſent? The Miſcarriage of the Bill was imputed to their want of Attendance, when at the ſame time they were deſired to be out of the way. And is it not a ſhame, that we, who have given fourſcore Millions of Money for the Preſervation of the Proteſtant Religion, ſhould have trimming at laſt in a Bill to prevent Hypocriſy?

'It was a Law among the Athenians, that when any Mutiny or Difference aroſe in the City of Athens, the Inhabitants ſhould take one ſide or other, or elſe they baniſh'd them the City: And truly, Sir, when Members of Parliament, and Miniſters of State ſtand neuter in matters that nearly concern the Intereſt of the Church of England, and have not Courage to own their Opinion, I think they very well deſerve to be turned out. Every * Gentleman here is ſent up to give his Vote, and when he declines that, he cannot be properly ſaid to ſerve the Place he repreſents. This I take to be the worſt ſort of Cowardiſe.

* Deſigned againſt ſuch as withdrew into the Speaker's Chamber, when the Queſtion was put for paſſing the Bill.

'But pray, Sir, let us enquire into the meaning of all this trimming. Are we afraid to diſoblige a Party of Men, that are againſt the Church and Government? Whoſe Principle of hatred and malice to the Family of the Stuarts deſcends to them by Inheritance? Men, Sir, that offer'd open Violence to her Majeſty's Royal Grandfather; Men that have not only the Impudence at this time to juſtify that Fact, but to turn the day of his Murder into Ridicule, and keep a Calf's-Head-Feaſt in the City. And can we imagine that thoſe who are Enemies to her Majeſty's Perſon and Office, and that were for hindering her from coming to the Throne, would not be glad of any Opportunity to ſhove her out of it?

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'Are these the Men to be countenanced and encouraged? This, in plain English, makes me believe this Ministry has too great a Resemblance of the last; that my Lord S——d is risen from the Dead, and now become Prime Minister of State.

'And now I am upon this Subject, give me leave to tell some Gentlemen here, who have been bellowing and roaring against Persons for taking Places in the late Reign, that it is a Reflection upon them to hold and continue their Places, in the Company of those that they have been exclaiming against.

'They may remember, if they please to recollect the Language in the late Reign——Sir, you must turn this Gentleman out, or else I cannot serve you.——And if any Gentleman was in the Interest of the Church of England, 'twas a sufficient Exception against his being employed. No Gentleman of that Principle was then thought fit to be a Deputy-Lieutenant, or a Justice of the Peace. If we would take the same Resolution, and the same Spirit, things might be better managed than they are.

'I did wonder to hear so many B——ps against this Bill, but that wonder ceased, when I considered whom they owed their Preferment to. The A. B——p of C——y, I think, was promoted to that See by my Lord S——d's Interest; and being asked what Reasons he had against this Bill, replied, he had not well consider'd the Bill, but that my Lord S——d told him it ought not to pass.——This was a very weighty Reason for the Head of our Ch——h to give; and yet, I dare say, none of the rest of them could give a better. One would be provoked, by the late Behaviour of the B——ps, to move for leave to bring in a Bill for the Toleration of Ep——cy; for, since they are of the same Principles with the Dissenters, it is but just, I think, that they should stand on the same foot.

'Now, Sir, give me leave to answer some Objections made against this Bill. The first is, that it is unseasonable at this time. Why unseasonable? Is it not as seasonable for us to pass a Law, for the further Defence of the Church of England here, as it was for Scotland to pass an Act last Session for the Security of the Kirk there? Why unseasonable? Does the Success of our Arms abroad, or the levying Money at home depend upon it? No Gentleman can say, that either of them do; and since there can be no Objection made against the Goodness of the Bill, why should we defer the putting it in execution?

'Another Argument against this Bill, is, that it will create Divisions. Are we to allow a Schism to avoid Division? The Dissenters hold it lawful to communicate sometimes,

and

and if ſo, why unlawful to communicate at other times? But oh! the fear of offending Diſſenters is to be urged as an Argument, and not provoking the Church of England: Either the Miniſtry muſt think we are ſo good-natur'd, as not to be diſpleaſed at any thing they do, or elſe that our Number is ſo inconſiderable, that they do not value it if we are diſpleaſed. Anno 2 Ann. 1703.

'Another Argument againſt this Bill proceeds from the Number and Strength of the Diſſenters. This I take to be an excellent Argument for the Bill; for, if they are ſo ſtrong and numerous, it is high time for us to guard ourſelves againſt them, and I appeal to every Gentleman here, whether one Diſſenter in Place, is not capable of doing more miſchief to the Church of England, than ten out of it? Suppoſe, Mr. Speaker, the Diſſenters had the power in their own hands (as they will certainly in a ſhort time, if not reſtrained) would they admit the Church of England into Places of Truſt, and into the Legiſlature, upon Occaſional Conformity?

'Her Majeſty has been ſo generous as to offer what further Security they think fit for the Religion in Scotland; how comes it, that ſome Gentlemen ſhould repreſent her Majeſty ſo much concerned to preſerve a Religion ſhe is not of, and ſo unwilling to grant a Security for the Church in which ſhe expects to be ſaved? According to this Method, one might expect the Scotch Covenant to be brought again into England, and that the Presbyterian-Party of that Kingdom, ſhould remonſtrate (as they did to her Royal Grandfather) the neceſſity of having one Religion, and one Worſhip in both Kingdoms.

'We have been under great Expences in keeping theſe Gentlemen out, and have been traduced as Perſons deſigning a French Government; and all the Return we are like to have for our Services and Sufferings, in our Purſes and Reputations, is, that theſe Perſons are like at laſt to become our Maſters, which is a very great Diſcouragement.

'Mr. Speaker, I take this Practice of Occaſional Conformity, to elude the Force of one of the beſt Laws made in the Church of England's Defence, that it is ſcandalous and knaviſh in itſelf, and I will pretend to foretel this; that, by the Benefit of this Occaſional Conformity, the Diſſenters will come to be the Majority of this Houſe; and then I will venture to pronounce the days of the Church of England few. That I may not ſee ſuch diſmal effects of our pretended Moderation, I heartily wiſh Succeſs to this Bill.'

On a Motion to give the ſaid Bill a ſecond reading in the Houſe of Lords, it was thrown out by a Majority of 12.

On the 27th the Commons voted 40,000 Men to act in conjunction with the Allies, 10,000 Augmentation-Troops for Supplies granted.

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for the next Year's Service, 1704; and 7000 Foot, and 1000 Horſe and Dragoons for Portugal: And that 1,801,000l. be granted for theſe Forces, Guards and Gariſons, and Payments to the Allies. Two Days after, they voted 40,000 Seamen, including 5000 Marines, for the Sea Service, 1704. Mr. Secretary Hedges acquainted the Houſe, the 30th, that her Majeſty had been pleas'd to give this Anſwer to their Addreſs about ſtopping all Correſpondence with France, 'That 'ſhe thought the Continuance of the ſtop of all Poſt Letters, 'Trade, and all other Correſpondence with the Enemies, ſo 'neceſſary for the public Good, that ſhe would forthwith 'give Orders to her Miniſter at the Hague, to inſiſt upon it 'with the States-General, as the Commons deſir'd.' The ſame Day the Houſe voted an Addreſs to her Majeſty, aſſuring her, they would provide for the making good ſuch Alliances as her Majeſty had made, or ſhould make, with the Duke of Savoy.

Vote occaſion'd by the great Storm.

Several Men of War having been loſt in the great Storm which happen'd about this Time, they unanimouſly reſolved, 'That an Addreſs be preſented to her Majeſty, expreſſing the great Senſe the Houſe had of the Calamity fallen upon the Kingdom by the late violent Storm, and that they could not ſee any Diminution of her Majeſty's Navy, without making Proviſion to repair the ſame: Wherefore they beſought her Majeſty, that ſhe would immediately give Directions for repairing this Loſs, and for building ſuch Capital Ships as her Majeſty ſhould think fit; and to aſſure her Majeſty, that at their next Meeting the Houſe would effectually make good that Expence; and would give Diſpatch in raiſing the Supplies already voted, for making good her Majeſty's Treaties with the King of Portugal, and all her Majeſty's other Allies, and would conſider of effectual Ways for promoting of Trade, for managing her Majeſty's Navy Royal, and for encouraging the Seamen.'

Land-Tax Bill paſs'd.

December 17. Mr. Speaker with the Houſe went up to attend her Majeſty, at the Houſe of Lords; and being returned, reported, that her Majeſty had been pleaſed to give the Royal Aſſent to *An Act, for granting an Aid to her Majeſty, by a Land-Tax*; and afterwards to make a moſt gracious Speech to both Houſes, of which he had deſired and obtained a Copy, which he read to the Houſe, and is as follows, *viz.*

Queen's Speech concerning a Conſpiracy in Scotland.

'My Lords and Gentlemen,

'I Think it proper, upon this Occaſion, to acquaint you, that 'I have had unqueſtionable Informations, of very ill Practices and Deſigns carried on in Scotland by Emiſſaries from 'France, which might have proved extremely dangerous to the

'the Peace of theſe Kingdoms; as you will ſee by the Particulars, which ſhall be laid before you, as ſoon as the ſeveral Examinations, relating to this Matter, can be fully perfected, and made public without Prejudice. In the mean time, I make no doubt, but, by this ſeaſonable Diſcovery, I ſhall be able to give ſuch directions for our Security, as will effectually prevent any ill Conſequences from theſe pernicious Deſigns. Anno 2 Ann. 1703.

'Gentlemen of the Houſe of Commons,

'I am very ſenſible of your great Readineſs and Affection for the public Service, by preſenting me ſo early in the Seſſions with a conſiderable part of your Supplies: I depend entirely upon your continuing with the ſame Zeal to diſpatch the remainder of them; that ſo we may be prepared to give the ſpeedieſt Aſſiſtance to our Allies, and to defeat the malicious Deſigns of our Enemies; who cannot be more induſtrious to contrive the Ruin of this Kingdom, and of the Proteſtant Religion, than I ſhall always be vigilant and careful both of their preſent Preſervation, and for their futnre Security.'

Reſolved, Nemine Contradicente, That an humble Addreſs be preſented to her Majeſty, returning the Thanks of this Houſe, for her moſt gracious Speech from the Throne, and for the communicating the Diſcovery her Majeſty hath made of the wicked Deſigns againſt her Government; with aſſurance, that this Houſe will ſtand by, and ſupport her Majeſty, and her Government, againſt all Pretenders, and all her Enemies whatſoever: Which Addreſs was as follows. Vote thereon.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons, in Parliament aſſembled, do return your Majeſty our moſt humble and hearty Thanks, for your moſt gracious Speech from the Throne. Commons Addreſs.

'We are truly ſenſible of your Majeſty's great Goodneſs, and of the Confidence you repoſe in us, by communicating the Diſcovery of the ill Practices and Deſigns that have been carried on in Scotland, by Emiſſaries from France; whereby we have an Opportunity to repeat our unanimous Reſolutions to ſtand by, and ſupport your Majeſty, and the Succeſſion in the Proteſtant Line, as limited by Law, againſt all Pretenders, and all your Majeſty's Enemies whatſoever.

'We want words to expreſs to your Majeſty, the deteſtation we have of any Conſpiracies and Attempts, to diſturb the Peace and Proſperity of your happy Government; under which, we muſt think our Security ſufficiently provided for, ſince your Majeſty has been pleaſed to give ſuch directions, as may prevent all ill Conſequences from them.

'It

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'It is a great Satisfaction to us, to find, that the Supplies we have already given, are ſo acceptable to your Majeſty: We ſhall go on with the ſame Readineſs and Zeal to diſpatch the remainder of them, that we may enable your Majeſty to give the ſpeedier Aſſiſtance to your Allies, and to defeat the malicious Deſigns of your Enemies.

'Your faithful Commons can never have the leaſt diſtruſt of your Majeſty's Vigilance and Care, for the Preſervation of the Proteſtant Intereſt in general, of the Monarchy, and the Church of England, as by Law eſtabliſhed: And we humbly beg leave to aſſure your Majeſty, that we will never be diſcouraged, but will continue inceſſant in our Endeavours, by all proper Methods, to tranſmit them ſecurely ſettled to Poſterity.'

The 20th, Mr. St. John reported, that the Members appointed to ſearch the Lords Journals, as to their Proceedings in relation to the Examination of any Perſons, who are diſcovered to have a Deſign againſt her Majeſty's Government, had ſearched the Lords Journals accordingly; and he read in his Place what they had found therein, and delivered the ſame in at the Table; where the ſame was again read.

A Motion being made, and the Queſtion being propoſed, That an humble Addreſs be preſented to her Majeſty, ſetting forth the great Concern this Houſe hath for her Majeſty's Royal Prerogative, and the Reſolution of this Houſe to ſupport the ſame; and that no Perſons accuſed for Crimes, who are her Majeſty's Priſoners, ought to be taken out of the Cuſtody of the Crown, without her Majeſty's leave; and a Debate ariſing in the Houſe thereupon;

And a Motion being made, and the Queſtion being put, that the Debate be adjourned; it paſſed in the Negative.

Then the main Queſtion being put; Reſolved, that an humble Addreſs be preſented to her Majeſty, ſetting forth the great Concern this Houſe hath for her Majeſty's Royal Prerogative, and the Reſolution of this Houſe to ſupport the ſame; and that no Perſons accuſed for Crimes, who are her Majeſty's Priſoners, ought to be taken out of the Cuſtody of the Crown, without her Majeſty's leave.

The 21ſt, Mr. Speaker reported, that the Houſe did yeſterday attend her Majeſty at St. James's, and preſented to her their Addreſs; and that her Majeſty was pleaſed to give a moſt gracious Anſwer, as followeth.

Her Majeſty's Anſwer.

'Gentlemen, I am very well pleaſed with your Aſſurances 'of diſpatching the Supplies, and with the other parts of this 'Addreſs, in which you expreſs ſo much Duty and Readineſs 'to ſupport, and to truſt me.

'You may depend upon my willingneſs to join my Endea-'vours with you, in ſecuring to Poſterity the Proteſtant Succeſſion

'ceſſion in the Monarchy, and the Church of England, as 'it is eſtabliſhed by Law.' Anno 2 Ann. 1703.

Mr. St. John reported, from the Committee to whom it was referred to draw up an Addreſs upon the Reſolutions of yeſterday, that they had drawn up an Addreſs accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Table, where the ſame was read, and (with an Amendment) agreed unto by the Houſe, as follows.

Second Addreſs.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons of England, in Parliament aſſembled, beg leave humbly to lay before your Majeſty the great and juſt Concern we are under, to ſee any Violation of your Royal Prerogative.

'Your faithful Commons believe the Adminiſtration of the Government beſt ſecured, when it is left to your Majeſty, with whom the Law has entruſted it; and have ſo firm a dependance upon your Majeſty's Affection to your People, and your great Wiſdom, that they can never apprehend ſo little danger from any Conſpiracy, as when the Examination thereof is under your Majeſty's directions.

'We are therefore ſurprized to find, that when ſeveral Perſons, ſuſpected of treaſonable Practices againſt your Majeſty, were taken into Cuſtody by your Meſſengers, in order to be examined; the Lords, in Violation of the known Laws of the Land, have wreſted them out of your Majeſty's hands, and without your Majeſty's Leave or Knowledge, in a moſt extraordinary manner, taken the Examination of them ſolely to themſelves; whereby a due Enquiry into the evil Practices and Deſigns againſt your Majeſty's Perſon and Government, may, in a great meaſure, be obſtructed.

'Your loyal Commons do therefore moſt earneſtly deſire your Majeſty, to ſuffer no Diminution of that Prerogative, which, during your Majeſty's Reign, they are confident will always be exerted for the Good of your People.

'And we humbly beg leave to aſſure your Majeſty, that as we are reſolved, by timely and effectual Supplies, to enable your Majeſty to carry on the War, which you have ſo glorioſly begun; ſo we will, to the utmoſt of our power, ſupport your Majeſty in the Exerciſe of your juſt Prerogative at home, and the aſſerting of it againſt all Invaſions whatſoever.'

January 3. Mr. Speaker reported, that he, with the Houſe, did, before the Receſs, preſent to her Majeſty their humble Addreſs of the twenty third of December laſt; and that her Majeſty was pleaſed thereupon to give this moſt gracious Anſwer.

'Gentlemen,

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Queen's Answer.

'Gentlemen, I have had the Satisfaction to find, that the 'matter which may have occasioned this Address, is now at 'an end.

'I return you many Thanks for the Concern you express 'for my Prerogative; and for your repeated assurances of 'making the Supplies effectual, which will be greatly for 'the Honour and Advantage of the Kingdom.

'I shall be careful not to give way to any Invasion of the 'Prerogative of the Crown, or of the Rights and Liberties 'of the People.'

Upon this Address of the House of Commons, the House of Lords drew up the following Representation.

Representation of the Lords to the Queen.

'May it please your most excellent Majesty, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, find ourselves under an unhappy necessity of making this our humble Application to the Throne, upon Occasion of an Address presented to your Majesty by the House of Commons, the 23d day of December last, and since that time published to the whole Nation in Print; by which the House of Lords is charged with the Violation of your Royal Prerogative, and of the known Laws of the Land; with wresting Persons suspected of treasonable Practices, and taken into Custody by Messengers, out of your Majesty's hands without your Leave or Knowledge, and in a most extraordinary manner taking the Examination of them solely to themselves; whereby a due Enquiry into the evil Practices and Designs against your Majesty's Person and Government, might in great measure be obstructed. And they conclude their Address, by most earnestly desiring your Majesty to suffer no diminution of your Prerogative, and promise to support you in the asserting it against all Invasions whatsoever. It is not possible for us to remain silent under this heavy Charge, so unjustly, and, without the least ground or colour, endeavoured to be fixed upon the whole Body of the Peers; which tending directly to create an ill Opinion of us in your Majesty, puts us under an inevitable necessity, of vindicating both the Legality and dutiful Manner of our Proceeding

'The Expressions in the Address of the House of Commons are so very harsh and indecent, that we may truly affirm the like were never used of the House of Peers, in any Age, not even by that Assembly, which, under the name of the House of Commons, took upon them not only to abolish the House of Lords, but to destroy the Monarchy We shall carefully avoid making returns of that kind: We consider too much what we owe to ourselves; and we know too well the profound Respect due to your Royal Person, to let any

any Provocation tranſport us ſo, as to uſe Words unfit to be offered by us to our Sovereign. Anno 2 Ann. 1703.

'The Matter of this Addreſs is no leſs injurious to us than the Terms. There was not the leaſt Occaſion for a juſt Objection to any Part of our Conduct in that Buſineſs to which the Addreſs relates; the Proceeding was ſtrictly juſtifiable by the known Laws and Cuſtoms of Parliament, it was carried on with the utmoſt Reſpect to your Majeſty, and with true Zeal for the Safety of your Perſon and Government; all that was done was agreed to by the concurrent Opinion of the Houſe, without the leaſt Objection from any of our Members, who have the Honour of ſerving your Majeſty in your great Offices and Employments.

'We humbly repreſent to your Majeſty, that, by the known Laws and Cuſtom of Parliaments, the Houſe of Peers has an undoubted Right, in Caſes where they conceive it to be for the Good and Safety of your Majeſty and the Kingdom, to take Examinations of Perſons charged with criminal Matters, whether ſuch Perſons be then in Cuſtody or not, and alſo to order the Perſons ſo to be examined, to be taken into Cuſtody of your Majeſty's ſworn Officers attending the Houſe, during ſuch Examination, or to commit them to any other ſafe Cuſtody that they ſhall think proper; and to reſtrain others, if they ſee cauſe, from having Acceſs to, or Communication with them: The Houſe of Lords has exerciſed this Right from time to time, as Occaſions have required, without Objection. Our Records are filled with Precedents which warrant our Claim in every Part of it, and we preſume to affirm to your Majeſty, that the drawing this Right into queſtion at any time, cannot but be of dangerous Conſequence to the Liberties and Safety of the People, and to the Conſtitution of the Government, as tending to avoid, or render in great meaſure ineffectual the Enquiries of Parliaments, which are ſo abſolutely neceſſary, eſpecially where many and great Perſons are engaged in dangerous Deſigns againſt the Government; or where ill Miniſters abuſe their Favour towards the oppreſſing or enſlaving of the People. Your Majeſty's Wiſdom and Goodneſs make us ſecure at preſent againſt all Influences of that kind, and we unanimouſly and heartily pray we may long enjoy the Bleſſing of your Reign. But if it happens in future times, that ill Men ſhould gain too great a degree of Favour with our Princes; how eaſy will it be for them to ſtifle or defeat all parliamentary Enquiries into their Crimes? For if the being in Priſon, or in the hands of a Meſſenger, will protect Men from being examined in the Houſe of Lords, or from being put into the Cuſtody of the proper Officers of the Houſe, during the Examination, and debarred from converſing with others; it will certainly be always in

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the Power of Favourites to cauſe thoſe who can be Witneſſes againſt them, as well as the Accomplices of their Deſigns, to be taken into Cuſtody. And if Perſons in Cuſtody are out of the reach of the Houſe of Lords, who are the hereditary Counſellors of the Crown, and in whom a judicial Power is lodged by the Conſtitution, it is not to be imagined that the Commons can pretend to a greater Power of Examining, Committing, or Reſtraining them.

'No Houſe of Commons till now has given countenance to this dangerous Opinion, which does ſo directly tend to the rendring ill Miniſters ſafe from the Examination of Parliaments: And we are perſuaded no Houſe of Commons hereafter will aſſert ſuch a Notion, becauſe they are not wont eaſily to part with a Power they have aſſumed; and it is certain, that they have ſeveral times taken upon them to exerciſe an Authority like that which they have ſo ſeverely reflected on in their Addreſs.

'This Conſideration gave us the greater Aſtoniſhment, to find our Proceeding repreſented in the ſtrange Terms of wreſting Priſoners out of your Majeſty's hands, and taking the Examination of them ſolely to ourſelves. We believe the ordering Perſons to be examined in that High-Court, where your Majeſty is always preſent in Conſideration of Law, and in that great Council where you may be preſent in your Royal Perſon, as often as you pleaſe, will never be thought an Excluſion of your Majeſty from the Examinations, if that was intended to be inſinuated by ſaying, we had taken the Examinations ſolely to ourſelves. Having thus laid before your Majeſty what it is we claim, and muſt inſiſt on, as the indiſputable Right of the Houſe of Peers, which was never thought, in the time of your royal Anceſtors, to be prejudicial to the juſt Prerogatives of the Crown, and which is manifeſtly neceſſary for the ſecuring the Liberties of your People, whereof we are aſſured your Majeſty will have an equal Care, We humbly beg leave to lay before you a ſhort State of the particular Matter of Fact relating to theſe Priſoners; not doubting, but when the whole Proceeding is known to your Majeſty, it will be approved not only as lawful, but every way reſpectful to your Majeſty.'

'On Tueſday the 14th of December, the Houſe of Lords was informed, that ſeveral Perſons had been ſeized by the Cuſtom-Houſe Officers on the Coaſt of Suſſex, as they came from France; and that amongſt them there was one Boucher, who was capable of making conſiderable Diſcoveries, having been in Arms in the French Service for many Years, and Gentleman of the Horſe, and Aid de Camp to the late Duke of Berwick, who ſtands attainted of High-Treaſon, and who had been ſecretly in England ſeveral times before; that it was probable, if he was ſtrictly examined, he might be

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brought to confeſs, ſince he ſaw his Life in apparent danger; but that he was a bold Man, and likely to attempt an Eſcape on that very account, if he was not carefully looked after: And the Houſe was alſo told, that there was a general Remiſſneſs both in the taking, ſearching, and looking to ſuch Priſoners, which did afterwards appear very evidently in the Examinations that were taken. Upon this Information the Earl of Nottingham, your Majeſty's principal Secretary of State, acquainted the Houſe that he had not heard of Boucher's Name particularly, but had ſent Meſſengers to bring one Ogilby, and the other Priſoners who had been apprehended by the Cuſtom-houſe Officers, to Town; and that he believed the Meſſengers would do their Duty, but he would not be anſwerable for them. Anno 2 Ann. 1703.

'After this Account of the Priſoners, and of what had been done in order to ſecure them, the Houſe thought themſelves obliged in Duty to your Majeſty, and for the Public Safety, at a Time when the Kingdom is engaged in an open War with France, and that there are too juſt Grounds to apprehend the dangerous Practices of French Emiſſaries, to make an humble Addreſs to your Majeſty, that particular Care might be taken for ſecuring the Perſon of Boucher, and of thoſe who were taken with him, and that none might be ſuffered to ſpeak with them till they were examined.

'The next day your Majeſty's gracious Anſwer to this Addreſs was reported to the Houſe, that Care had been taken to ſecure the Priſoners, and that your Majeſty would give Orders that no body ſhould ſpeak with them till they were examined. Thereupon the Lords entred into a farther Conſideration of the Importance of this Matter, and, conceiving nothing to be more likely to bring Priſoners, who had forfeited their Lives, to a full Diſcovery of the Truth, than to find themſelves under the Enquiry of a Parliament, they thought it would be of public Service, for them to take Examinations of theſe Perſons; and accordingly an Order was made, that no Perſons ſhould ſpeak with the Priſoners, till they had appeared at the Bar of the Houſe.

'On the 16th day, the Earl of Nottingham informing the Houſe of Lords, that the Priſoners were brought to Town; the Uſher of the Black-Rod was ordered to take them into his Cuſtody, in order to their Examination, and to keep them ſeparate, and in cloſe Cuſtody, (as your Majeſty had before directed) and it being thought moſt proper, from the nature of the thing, that the Examination ſhould be by a Committee of Lords, rather than by the whole Houſe, it was reſolved accordingly.

'We beg leave to mention to your Majeſty a Matter of Fact which ſatisfied the Lords, that their Reſolution to take the Examinations of Boucher, and the Perſons apprehended

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with him, was neither unknown nor diſagreeable to your Majeſty; on the ſame day when that was ordered, being the 15th of December, the Lords reſolved to examine Sir John Maclean, a very dangerous Perſon, as was repreſented to the Houſe, who then ſtood committed in the hands of a Meſſenger; and for that purpoſe ordered him to be brought to the Houſe the next day, having, as they then thought, very good Grounds to believe it might prove of great Service to your Majeſty. Sir John Maclean was brought to the Houſe according to the Order, but your Majeſty being pleaſed ſo far to take notice of this Order, as to ſignify to the Houſe by the Lord-Steward, that Sir John Maclean had been in part examined already, and that your Majeſty thought it not proper, to have that Buſineſs taken out of the way of Examination it was then in, but that your Majeſty would in a ſhort time communicate it to the Houſe; the Lords immediately acquieſced in your Majeſty's Opinion, and ſent back Sir John Maclean to the Place from whence he was brought. It was with this Diſpoſition of Mind the Lords acted in the whole Matter; and if your Majeſty, who no doubt had the ſame notice of both Orders, had thought any other Method of the Examination of Boucher, and the Perſons taken with him, more proper than of the Lords; they had reaſon to conclude your Majeſty would have intimated it at the ſame time, and moſt certainly, the Houſe would have had a like Deference for your royal Judgment in that Inſtance alſo.

'The Lords Committees appointed to examine the Priſoners proceeded with all poſſible Diſpatch, and made their Report to the Houſe on the 21ſt of December. Upon Conſideration of the Report, the Houſe found it requiſite to commit Boucher to the Priſon of Newgate for High-Treaſon, and the Lords Committees having ſubmitted to the Judgment of the Houſe, whether ſeveral Parts of the Examinations referred to in their Report, ſhould be laid open to the Houſe, or put into any other Way of being farther enquired into, or proſecuted; the Houſe, out of a full Aſſurance they had, that when the Matter of Fact ſhould be laid before your Majeſty, you would certainly give ſuch Orders thereupon as were every way ſuitable to your royal Prudence, and tender Care of the Public Safety, did unanimouſly reſolve, without ſo much as ſuffering thoſe Parts of the Report to be laid open to the Houſe, that an humble Addreſs ſhould be made from the Houſe to your Majeſty, by the Lord Steward, and the Duke of Somerſet, (two of the Lords Committees to whom the Examination had been referred) laying before your Majeſty the whole Report, with all Matters relating thereto, and humbly deſiring your Majeſty to give Order, that Boucher ſhould be proſecuted by Mr. Attorney-General for High-Treaſon,

Treaſon, and that as to the Commitment, Proſecution or Diſcharge of the other Priſoners mentioned in the Report, you would be pleaſed to give ſuch Directions as ſhould ſeem moſt proper to your royal Wiſdom. Thus, that as the whole Affair was entred upon out of Zeal for your Majeſty's Preſervation, and the Safety of the Kingdom, and was carried on and concluded with all poſſible Reſpect to you; ſo we had the Comfort to reſt aſſured, that our Behaviour was no leſs graciouſly accepted by your Majeſty, from the Anſwer you were pleaſed to make, the ſame Day, to our laſt Addreſs on this Subject, and which was reported to us on the 22d of December, by the Duke of Somerſet, whereby your Majeſty was pleaſed to ſignify to the Houſe, with your accuſtomed Goodneſs, that you would give order for every thing as the Lords had deſired. Anno 2 Ann. 1703.

'Madam, this is a true and juſt Account of our Proceedings, which have been ſo ſtrangely miſrepreſented, and to which no Exception can poſſibly be taken, by any Perſons rightly informed. For, as we had your royal Approbation of all that was done; ſo the Houſe of Commons could have had no Pretence of Objection, if they had taken the uſual Parliamentary Methods of deſiring to be informed of what we had done, and of the Grounds of our Proceedings, before they had approached your Majeſty with ſuch a Repreſentation of them.

'Their carrying this unprecedented Addreſs to your Majeſty, in ſo haſty a manner, gives us almoſt as great trouble as the hard Uſage we find in it.

'The ancient, known, and indeed only effectual Method of preſerving a good Correſpondence between the two Houſes of Parliament, has been by Conferences. If, at any time, either Houſe conceived they had a reaſonable Ground to object againſt the Proceedings of the other, Conferences have been deſired, and the Matter in debate between them fairly diſcuſſed; and thereby, Miſtakes have been declared for the moſt part, and a good Underſtanding cultivated, and a mutual Reſpect preſerved, which is always highly requiſite, in the Nature of our Conſtitution, but more eſpecially neceſſary in this time of War and Danger.

'Had the Houſe of Commons thought fit to have purſued this Method upon this Occaſion, we ſhould have been able to have given them entire Satisfaction, not only of the Lawfulneſs of all we had done, but of the juſt and weighty Ground upon which we took the Examinations of theſe Perſons into our own hands: or at leaſt, if they could have convinced us of any Miſtake, we ſhould have given them any reaſonable Satisfaction.

'But, without making any ſuch previous Step, the Houſe of Commons have made an Appeal directly to the Throne, againſt the Houſe of Lords, and charged them, tho' moſt unjuſtly, with Attempts of the higheſt Nature. Nothing like this was ever done before, and out of our hearty Concern for the

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the Preſervation of our happy Conſtitution, we hope the ſame thing will never be done again. We know your royal Heart is unmoveably fixed on the preſerving the Liberties of your People, and tranſmitting them entire to Poſterity; but if, in after times, the Houſes of Parliament ſhould be appealing againſt one another to the Crown, (for, if ſuch a Courſe be juſtifiable in the Houſe of Commons, the ſame Method may be taken by the Lords) as your Majeſty is now ſenſible how great Difficulties it neceſſarily brings upon a good Prince; ſo it is eaſy to foreſee (and we cannot think of it without terror) how fatal the Conſequences may be, in the Reign of an ill-deſigning Prince, and what Advantages may be taken from it, for utterly ſubverting the beſt-ordered Form of Government in the World. There are Examples abroad, where Proceedings of this kind have ended in the Overthrow of the Liberties of the People, which makes us the more apprehend the Beginning of them among our ourſelves. Your Majeſty's great Judgment cannot but readily diſcern, whither it does naturally tend, for one Houſe of Parliament to be exciting, and earneſtly deſiring the Sovereigns to exert a real or ſuppoſed Prerogative againſt the other Houſe. It is not eaſy to imagine what the Commons could expect of your Majeſty from ſuch an Application: The Lords have never entertained a Thought of uſing this dangerous Method, whatever Occaſions may have been given within the compaſs of late Years; and we promiſe your Majeſty, we will always endeavour to preſerve a good Underſtanding with the Houſe of Commons, and ſhall never think it too dear to procure that Union at any rate, unleſs that of delivering up thoſe Rights and Powers which are lodged in us by the Law, and without which, the Conſtitution cannot ſubſiſt.

'We ſhall never be guilty of the Preſumption of preſcribing to your Majeſty, when, or againſt whom you ſhould exert your Prerogative; but we will be always ready to aſſiſt you in the Support of all the juſt Rights of the Crown, as well as in the maintaining the Liberties of the Subject, which we know are no leſs dear to your Majeſty.

'It may, with Modeſty and Truth, be affirmed that the Lords have, in all times, been the ſureſt and moſt natural Bulwark of the Prerogatives of the Crown, they being (as your royal Grandfather, of ever-bleſſed Memory, was pleaſed to expreſs it) an excellent Screen and Bank between the Prince and the People, to aſſiſt each againſt any Encroachment of the other.

'We will never contribute, by any Act of ours, to the Diminution of the Rights of the Crown, nor, as far as we are able, will ſuffer it in others. We cannot act otherwiſe without hurting ourſelves in the higheſt degree, being throughly

throughly convinced, that the Preſervation of the legal Prerogative, is not only the ſureſt way to ſecure our own Privileges, but of abſolute Neceſſity for the happy and rightful Adminiſtration of the Government. And we hope the Houſe of Commons will, in all times to come, ſpeak and act with that regard to the Prerogative which they ſeem to have taken up lately. Anno 2 Ann. 1703.

'There remains one Particular more, which we will only name to your Majeſty, becauſe we reſt ſatisfied it cannot have Weight any where; that is, the Inſinuation in the Addreſs, as if the Examination of theſe Priſoners, by the Lords, was in order to obſtruct the Enquiry into the Deſigns againſt your Majeſty's Perſon and Government; or at leaſt, that it was likely to produce ſuch an Effect. Our dutiful Zeal for your Majeſty's Government, and our warm Concern to diſcover all Deſigns and oppoſe all Practices againſt it, are too well known to the World, that any Suggeſtions of that ſort ſhould make the leaſt Impreſſion to our Diſadvantage; and we are very ſure, it was no Suſpicion of that Nature which gave the true Riſe to this very ſharp Addreſs. It is eaſy to determine, whether a hearty and forward Undertaking to ſearch into the Deſigns of your Enemies, or the ſeeking Occaſions to object to, and interrupt ſuch Endeavours, be moſt likely to obſtruct the Diſcovery of the pernicious Practices of Traytors.

'Moſt gracious Sovereign, We moſt humbly ask pardon for preſuming to give your Majeſty the trouble of this long Repreſentation, which has proceeded from the paſſionate Concern we have to ſtand, not only acquitted, but entirely approved in the Judgment of ſo excellent a Queen, and ſo juſtly beloved of all her Subjects.

'We depend upon your Juſtice, as well as your Goodneſs, that nothing can do us Prejudice, (from whatſoever Hands it comes) in your royal Opinion, while we continue to act in that Station where we are placed by the Form of the Engliſh Government, according to the Laws and Cuſtoms of Parliament, with all imaginable Reſpect and Duty to your ſelf, and all poſſible Zeal for the Safety and Happineſs of your Kingdom.

'Give us leave to conclude this our humble Addreſs with this firm Promiſe, That no Danger, no Reproaches, nor any Artifices whatſoever, ſhall deter or divert us from uſing our utmoſt Endeavours, from time to time, in diſcovering and oppoſing all Contrivances and Attempts againſt your royal Perſon and Government, and the Proteſtant Succeſſion, as by Law eſtabliſhed.'

Her Majeſty's gracious Anſwer to this Repreſentation was;

'My Lords,

'I am very ſorry for any Miſunderſtandings that happen 'between Her Majeſty's Anſwer.

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'between the two Houſes of Parliament, which are ſo inconvenient for the public Service, and ſo uneaſy to me, 'that I cannot but take notice, with Satisfaction, of the 'Aſſurances you give me, that you will carefully avoid all 'Occaſions of them.

'I thank you for the Concern you expreſs for the Rights 'of the Crown, and for my Prerogative; which I ſhall 'never exert ſo willingly as for the Good of my Subjects, and 'the Protection of their Liberties.'

Jan. 22. The Commons ordered, that ſome of their Members be appointed to ſearch the Journals of the Houſe of Lords, touching their Proceedings upon the late Addreſs of this Houſe to her Majeſty, and their Repreſentation thereupon; and alſo to ſearch Precedents concerning Commitments by the Houſe of Lords, in Caſes where the Perſon has been in the Cuſtody of the Crown, and report the ſame to the Houſe: and ſeveral Members were appointed accordingly.

Feb. 3. The ſaid Report of the Journal of the Houſe of Lords, relating to the Addreſs of this Houſe, and the Repreſentation of the Houſe of Lords was read.

Reſolved, That an humble Addreſs be preſented to her Majeſty, to clear this Houſe from the Miſrepreſentation of the Houſe of Lords, in their Repreſentation preſented to her Majeſty; which ſaid Addreſs was conceiv'd in the following Terms:

The Commons Addreſs.

'Moſt gracious Sovereign, your Majeſty having, with great Goodneſs, declared from the Throne to your Parliament, that divers ill Practices and Deſigns had been carried on in Scotland, by Emiſſaries from France, which might have proved extremely dangerous to the Peace of theſe Kingdoms; and that you would lay the Particulars before your Parliament, as ſoon as the ſeveral Examinations could be fully perfected, and made public, without prejudice; we, your Majeſty's moſt dutiful and loyal Commons, reſting ſecure and ſatisfied in your Majeſty's great Wiſdom and Care, moſt thankfully acknowledge the Confidence you have been pleaſed to repoſe in us.

'But finding, upon the Lords Journals, that their Lordſhips, the very ſame Day, made two Orders, one to remove your Majeſty's Priſoners out of your Cuſtody into their own, and the other to commit their Examination ſolely to a Committee of ſeven Lords, choſen and appointed by themſelves; by which your Majeſty ſeemed excluded from any Power over the ſaid Priſoners:

'Your loyal Commons, juſtly ſenſible of the dangerous Conſequences of ſuch Proceedings, thought themſelves obliged to declare their Concern at this Violation of your royal Prerogative, and the known Laws of the Land, in an humble Addreſs preſented to your Majeſty. 'Your

Your faithful Commons are well aſſured, when this Matter comes to be rightly ſtated and underſtood, a Zeal ſo well intended, and ſo well grounded, will rather be imputed to them as meritorious, than liable to exception; and therefore, ſince their humble Addreſs has been ſo artfully miſrepreſented by the Lords in their late Repreſentation, preſented to your Majeſty on Tueſday, the 18th of January, and publiſhed and ſpread with unuſual Induſtry through all Parts of the Kingdom, they look upon themſelves under an indiſpenſible Neceſſity of appearing before your Majeſty in their own Juſtification. Anno 2 Ann. 1703.

'Their Lordſhips think fit to take offence at the Manner and Words of our Addreſs, and accompany this Exception with Reflexions and Inſinuations, more harſh and more odious than the moſt opprobrious Language: But, as we made uſe of no Terms but what were ſuitable to the Occaſion, ſo it will appear by Precedents, that the ſame have been frequently and reciprocally uſed by both Houſes to each other; nor could the Commons, in reſpect to your Majeſty, aſſert your royal Prerogative, in Words of leſs Force than thoſe in which they have vindicated their own Privileges.

'Whatever Expreſſions our Zeal for your Majeſty, and the Public, might have inſpired, we could never have offered to our Sovereign ſo ungrateful a Remembrance as the Deſtruction of the Monarchy, by a deteſtable Aſſembly, compoſed of Members of both Houſes, who being alike Partakers in the Guilt, ought equally to ſhare the Reproach.

'With much more Reaſon might we obſerve, both on behalf of your Majeſty and the Commons, that their Lordſhips, not contented with preferring their own Examinations to yours, not contented with excluding your Majeſty and the Commons, to whom Parliamentary Enquiries moſt properly belong, do appropriate to their Houſe only, even in their Application to their Sovereign, the Name of a Parliament; an Inſtance not to be paralleled, unleſs by that very Aſſembly that ſubverted the Monarchy.

'It is not the Queſtion at preſent, as ſtated by the Lords, whether their Lordſhips have a Power of taking into Cuſtody, while under Examination, Perſons accuſed of criminal Matters, cognizable in Parliament? But, that their Lordſhips have a right to take the Priſoners of the Crown, and the Examination of them, ſolely into their own hands, without your Majeſty's Conſent, and in ſuch a Manner as muſt neceſſarily prove an Excluſion to your Majeſty, and this Houſe, is the Propoſition your Commons deny, and for which their Lordſhips have produced no Precedent.

'This unhappy Occaſion has been, at the ſame time, accompanied with the moſt ſurprizing Inſtances of Contradiction,

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and Counter-Orders to your Majeſty, both preceding and ſubſequent to it, but eſpecially on the 29th of January laſt, when your Majeſty, with your accuſtomed Goodneſs, communicated to the Lords the Papers relating to the Scotch Conſpiracy, with an Exception only of ſome Matters not yet proper to be made public, without preventing a further Diſcovery of Secrets of greater Importance, with which your Majeſty aſſured their Lordſhips they ſhould alſo be acquainted, as ſoon as it could be done without Prejudice. However their Lordſhips, upon what Provocation, or for what Reaſon no where appears, immediately addreſſed your Majeſty, preſſing you to lay before them the whole Matter, with all Papers relating thereunto; by which your Majeſty was put under a neceſſity, either to give their Lordſhips a Refuſal, or to comply with their unexpected Importunity, to the endangering the public Service. Theſe Proceedings, ſo extraordinary in their Nature and in their Manner, could not but ſenſibly affect your faithful Commons, whoſe earneſt Deſire it is to ſee both your Houſes of Parliament, and the whole Body of your People, entirely agreed to pay the deference due to your Majeſty's Wiſdom, to confide in your Care, and to promote and maintain your Honour and Dignity.

'Their Lordſhips, not ſatisfied with aſſuming this unprecedented Power, have endeavoured, with a great deal of Art, to perſuade your Majeſty of the Neceſſity of it, to prevent the Deſigns of ill Princes and their Favourites: But as it may ſeem unreaſonable for their Lordſhips to begin to practiſe upon a good Prince, ſuch Methods as are pretended only to be needful againſt an ill one, ſo it is our humble Opinion, that the Dangers might be much greater, admitting this Precedent; ſhould the Lords combine to defend one another from Enquiries and Proſecutions, all parliamentary Impeachments might be eluded, ſecret Deſigns carried on, the Innocent aſperſed without Reparation, and the Guilty acquitted without Trial. Nor is that Inſtance mentioned by the Lords an unreaſonable Caution, ſince that Revolution in a neighbouring Kingdom, alluded to by their Lordſhips, was occaſioned by the Incroachments of a prevailing Cabal of Lords, who endeavouring to enſlave the People, and to betray their King and their Country to a foreign Power, obliged the Church and the Commons to unite in the public Defence.

'Your faithful Commons have found themſelves ſo happy under your Majeſty's Adminiſtration, that they pleaſe themſelves with more agreeable Proſpects, and, renouncing ſuch Examples of unſeaſonable Jealouſies and Fears, moſt thankfully receive the Bleſſing of your Reign: Nor could they have made a more grateful return for your Majeſty's generous Protection to their Liberties, than by a ſuitable Concern for your Prerogative.

'If

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'If their Lordſhips had conſulted their own Journals, with the ſame Care that we always take to be rightly informed, they would hardly have affirmed, that a direct Appeal to the Throne, without any previous deſire of Conference, had been an unprecedented Practice. Their Books are filled with variety of Inſtances to the contrary; but, without examining their Books, it ſeems very ſurprizing, that their Lordſhips could ſo ſoon forget their Addreſs preſented to your Majeſty the laſt Seſſion on behalf of the Lord Biſhop of Worceſter, and their Addreſs to the late King on behalf of William Earl of Portland, Edward Earl of Orford, John Lord Somers, and Charles Lord Hallifax, impeached by the Commons of high Crimes and Miſdemeanors; and when this Houſe formerly expoſtulated with the Houſe of Lords, for Proceedings in the very ſame Method of which they now complain, their Lordſhips made a moſt ſolemn Declaration in theſe words;

'That they muſt ever aſſert a Liberty in their Houſe to 'apply to the Throne by themſelves, for the doing any thing 'warranted by Law, &c.'

'Nor can the Lords, we preſume, upon ſecond reflection, deny the Commons the ſame Liberty, which their Lordſhips themſelves have ſo ſtrongly aſſerted, and ſo frequently practiſed.

'Your loyal Commons ſincerely concur with their Lordſhips in declaring, that we will never contribute by any Act of ours to the diminution of the Rights of the Crown, and that we will not ſuffer it in others: Your Majeſty, their Lordſhips, and the whole World, may judge from the Example we have now given, if their Lordſhips do truly wiſh the Houſe of Commons may, in all times to come, ſpeak and act with that Regard to the Prerogative, which they allow us the Honour to have now taken up; we ſhall be very unfortunate to continue under their diſpleaſure, at the ſame time when they ſeem to hope, that thoſe who ſucceed us will take pattern by us.

'We wiſh their Lordſhips alſo on their part may continue, in all times to come, to ſpeak with that Regard to parliamentary Impeachments, which they ſeem ſo lately to have taken up; ſince we have reaſon to apprehend, that the Miſunderſtandings which have of late Years ariſen between the two Houſes, have been principally owing to the Artifices of ſome particular Perſons among themſelves, whom the Commons thought it their Duty, for the public Safety, to bring to Juſtice. How much more difficult will all ſuch Endeavours be rendred, ſhould their Lordſhips be once admitted ſole Examiners of Accuſations againſt each other, as they are already ſole Judges?

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'We are accuſed, but moſt unjuſtly, of exciting and earneſtly deſiring your Majeſty to exert your Prerogative againſt the Houſe of Lords: We appeal to the words of our Addreſs, if it is poſſible naturally to impoſe any ſuch ſenſe upon any Expreſſion that is there: We are ſorry their Lordſhips ſhould deſcend ſo low as to the ſtraining and wreſting of words, by which they rather diſcover an unfortunate Inclination, to make us ſeem culpable upon any terms, than that they in truth believe us ſo. We know how vain and how fruitleſs an Application it would be to excite your Majeſty to any Abuſe of your Power, which we are convinced you will always exerciſe for the general Good; and ſo far are your Commons from entertaining any ſuch deſire, that we heartily wiſh to ſee a good Correſpondence preſerved between the two Houſes; nor would forbear to purchaſe it at any rate, except giving up the Rights of your Majeſty, by whom we are protected, and the Liberties and Properties of the People, by whom we are entruſted.

'Theſe few Inſtances, ſo plain and ſo unconteſtable, we preſume will be ſufficient, without treſpaſſing much longer upon your Majeſty's time, to diſcredit whatever elſe has been alledged, to create in your Majeſty, and thoſe we repreſent, an ill Opinion of us: We have been careful and induſtrious to avoid, as far as was conſiſtent with our neceſſary Juſtification, all Occaſion of reviving Animoſities, and, how great ſoever the Provocation has been, your Majeſty having declared how uneaſy you are under ſuch Miſunderſtandings, we ſhall make no difficulty to lay aſide our Reſentments, who ſhall always be ready to ſacrifice our Lives and Fortunes to your Quiet and Service: Nor can we doubt but we muſt ſtand fully acquitted to the whole World, and eſpecially to your Majeſty, ſince the Zeal that we have ſhewn, and the Reproaches that we have borne, have been owing to no other Cauſe but the Defence of an excellent Queen, in whoſe hands God Almighty hath placed the executive Authority over theſe Nations; which Authority it has been the only Endeavour of your faithful Commons to preſerve as entire as our Laws and Conſtitution allow.

'May it pleaſe your Majeſty, It is with the deepeſt Concern, and a Grief not to be expreſſed, that your dutiful and loyal Commons have found themſelves engaged in diſputes of this nature, by which they have been ſo unſeaſonably interrupted in finiſhing the Supplies, and other matters of the higheſt Importance How zealouſly they have applied themſelves to the Diſcharge of their Duty, appears from their having already preſented your Majeſty with the greateſt part of their Aids, with a Diſpatch and Unanimity beyond Example: Nor could the few Bills yet depending have met the

the leaſt Objection or Delay, but from the indiſpenſible Neceſſity of vindicating your Majeſty's Royal Prerogative, the Privileges of our own Houſe, and the Rights and Liberties of all the Commons of England, in ſeveral Inſtances invaded almoſt at the ſame time; we wiſh there may have been more of Miſtake than Deſign in thoſe who have created thoſe unhappy Differences: However, we deſire the Remembrance may be henceforth blotted out, and that there may remain no other Impreſſion in the Hearts both of Lords and Commons, than a ſincere and paſſionate Concern for your Majeſty's Welfare and Glory: Nor any other Contention hereafter ariſe, but by whom the public Good ſhall be beſt advanced, the Proteſtant Succeſſion, and the Church of England beſt ſecured, and the juſt Rights and Prerogatives of the Crown beſt ſupported.' Anno 2 Ann. 1703.

The Queen's Anſwer to the Commons Addreſs was to this effect:

'Gentlemen, I return you many Thanks for the great 'Concern which you expreſs for me and my juſt Rights. 'Your Diſpatch of the Supplies is a great Advantage to 'the public Service. And I am very well pleaſed with the 'Aſſurances you give me of your Care to avoid any Occa'ſion of difference between the Houſes, eſpecially at this 'time, when there is ſo apparent a Neceſſity of ſtrengthen'ing ourſelves againſt the malicious Deſigns of our Ene'mies.' Queen's Anſwer.

Feb. 24. *Ordered*, That ſome Members be appointed to ſearch the Journals of the Houſe of Lords, as to what Proceedings have been ſince the laſt Report to this Houſe, upon the Papers communicated to the Lords by her Majeſty, relating to the Conſpiracy; and ſeveral Members were appointed accordingly.

The 28th, Sir Humphry Mackworth reported, that the Members appointed had been to inſpect the Journals of the Houſe of Lords, what Proceedings had been ſince the laſt Report to this Houſe, upon the Papers communicated to the Lords by her Majeſty, relating to the Conſpiracy; but that they did not find any Proceedings as yet entered into their Journals: But that out of the Papers for making up the ſame, they had taken Copies of the Proceedings they found therein, which he read in his place, and afterwards delivered in at the Table, where the ſame was read.

Ordered, That the Conſideration of the ſaid Report be referred to the Committee of the whole Houſe, who are to conſider of the Papers communicated by her Majeſty to this Houſe, relating to the treaſonable Correſpondence carried on with St. Germains and the Court of France.

The 29th, Mr. Freeman (according to Order) reported from

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from the Committee of the whole Houſe, to whom it was referred to conſider of the Papers communicated by her Majeſty to this Houſe, relating to the treaſonable Correſpondence carried on with St. Germains and the Court of France, the Reſolution which they had directed him to report to the Houſe, which he read in his place, and afterwards delivered in at the Table, where the ſame was read, and is as followeth:

Reſolved, That it is the Opinion of this Committee, that the Houſe be moved, that an humble Addreſs be preſented to her Majeſty, that ſhe will be pleaſed to re-aſſume the juſt Exerciſe of her Prerogative, and take to her ſelf the Examination of the Matters relating to the Conſpiracy, communicated to this Houſe by her Majeſty; and to give aſſurance, that they will defend her Majeſty's ſacred Perſon and Government againſt all Perſons concern'd in the ſaid Conſpiracy, and all other Conſpirators whatſoever: And to declare, that the eſtabliſhing of a Committee of ſeven Lords, for the ſole Exmaination of the ſaid Conſpiracy, is of dangerous Conſequence, and may tend to the Subverſion of the Government.

Reſolved, That the Houſe doth agree with the Committee, that an humble Addreſs be preſented to her Majeſty, that ſhe will be pleaſed to re-aſſume the juſt Exerciſe of her Prerogative, and take to her ſelf the Examination of the Matters relating to the Conſpiracy, communicated to this Houſe by her Majeſty, and to give aſſurance, that they will defend her Majeſty's ſacred Perſon and Government, againſt all Perſons concerned in the ſaid Conſpiracy, and all other Conſpirators whatſoever; and to declare, that the eſtabliſhing of a Committee of ſeven Lords, for the ſole Examination of the ſaid Conſpiracy, is of dangerous Conſequence, and may tend to the Subverſion of the Government.

Reſolved, That the ſaid Reſolution be preſented to her Majeſty by the whole Houſe; which was done accordingly, and her Majeſty was pleaſed to return the following Anſwer:

'Gentlemen, The great Marks of Truſt and Confidence, 'which you have given me in this Addreſs, are very acceptable to me.

'I thank you for your Advice, and ſhall conſtantly exerciſe my juſt Prerogative for the Security and Satisfaction 'of my Subjects.'

The Houſe having order'd all theſe Particulars to be collected, and publiſh'd together, we have done the ſame; and muſt, therefore, return now to ſuch other Tranſactions as took place in the Interval: Among which, the following, for the ſake of the Reſolutions taken by both Houſes thereon, deſerves a Place.

Jan. 20. A Petition of Charles Bathurſt Eſq; was preſented

ſented to the Houſe of Commons, and read, touching an Order made by the Houſe of Peers, the twelfth of February, 1702, with relation to an Order made by the Court of Exchequer, the fifteenth of July, *Decimo tertio regni Regis Gulielmi Tertii*, concerning an Inquiſition and Survey of the Boundaries of the Honour of Richmond, and Lordſhip of Middleham; and of many other Honours, Manors, and Lordſhips, bounding thereupon; and praying ſuch Relief on the Subject-Matter of the ſaid Petition, as ſhall be thought fit.

The Caſe of the ſaid Charles Bathurſt Eſq; as preſented to the Houſe.

July 15, 1701. The Court of Exchequer made an Order *ex officio*, for the Preſervation of a Record of that Court.

Nov. 9, 1702. The Lord Wharton, finding that the ſaid Record was made uſe of as Evidence againſt him, in a Trial at the Queen's-Bench-Bar of an Iſſue directed out of Chancery, wherein the ſaid Lord Wharton was Plaintiff, and the ſaid Petitioner Mr. Bathurſt, the ſaid Mr. Squire, and others, were Defendants, concerning ſome Lead-Mines, did, on the 19th of December, 1702, petition the Houſe of Lords (by way of Appeal) from the ſaid Order of the Court of Exchequer, and prayed to have that Order diſcharged, and the Record taken off the File.

In which Petition the Lord Wharton complained, that the ſaid Record was impoſed on the Court (by contrivance between the ſaid Mr. Squire and Mr. Thompſon, a ſworn Clerk in the Court of Exchequer) and therefore prayed, that the ſaid Mr. Squire and Mr. Thompſon might anſwer the ſaid Petition, (which he call'd an Appeal;) and accordingly they were ordered to anſwer the ſame.

Jan. 7, 1702. Mr Squire and Mr. Thompſon petitioned the Houſe of Lords, ſetting forth, that no Suit was ever depending in the Court of Exchequer between the Lord Wharton, and the ſaid Mr Squire and Mr. Thompſon; and that therefore the Lord Wharton's ſaid Petition was not an Appeal, but an original Complaint againſt them for a Crime of a high nature, for which they ought to be left to be tried by the uſual Courſe of the Laws of the Land; and prayed their Lordſhips to diſmiſs the Lord Wharton's Petition, and to diſcharge their Order, by which they the ſaid Mr. Squire and Mr. Thompſon were obliged to anſwer the ſame.

Jan. 21, 1702. The Lord Wharton put in his Anſwer to their Petition, inſiſting on his Appeal as regular, and alledging that there was a Suit in Chancery, wherein the ſaid Mr. Squire was a Defendant (among others) concerning the Lead-Mines in queſtion, and that the Order made in this Caſe (tho' in the Court of Exchequer) affected the Suit in Chancery; and he then obtained an Order to hear one Council on each ſide the very next day.

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Jan. 22, 1702. Council were heard, and their Lordſhips were pleaſed (on debate) to diſmiſs the Petition of the ſaid Mr. Squire and Mr. Thompſon, and to order them to anſwer the Lord Wharton's Petition (or Appeal) on Monday then next following. Againſt which Proceedings ſeveral of the Lords entered their Diſſent (or Proteſt) and gave Reaſons for their ſo doing in the words following, *viz.*

Firſt, 'We conceive that by this we aſſume a Juriſdiction in an original Cauſe, for theſe Reaſons:

1ſt, 'Becauſe there has been no Suit between the Parties in the Exchequer; and conſequently this Petition cannot be called an Appeal from that Court.

2dly, 'Altho' there was a Suit in the Court of Chancery, yet one of the Perſons required to anſwer was not a Party in that Suit; and therefore as to him (at leaſt) it muſt be an original Cauſe.

3dly, 'Tho' all had been Parties in the Chancery, yet it never was heard, that an Appeal lay from one Court that had no Suit depending in it, becauſe there was a Suit depending in another Court.

Secondly, 'Becauſe no Court can take any Cognizance of a Cauſe in which that Court cannot make an Order; but in this Caſe, the Houſe of Lords cannot make an Order (becauſe very many are concerned in this Record, who are not before this Houſe) therefore this Houſe cannot take any Cognizance of it.'

Jan. 25. The Lord Wharton acquainted the Houſe, that he was willing to leave out Thompſon, and did only expect Squire ſhould anſwer his Petition, and thereupon he obtained an Order to that purpoſe.

Feb. 2. Mr. Squire put in his Anſwer, ſtill inſiſting, as he had done in his ſaid Petition, that it was on original Complaint againſt him, and could not be called an Appeal, there being no Suit depending in the Court of Exchequer, between the Lord Wharton and him, and that the Record, *(which the Lord Wharton would have ſuppreſſed) not only greatly concerned her Majeſty, but the Inheritances of ſeveral thouſands of Perſons, who are equally concerned, (if not more than he) in the Preſervation thereof; and that it was more immediately incumbent on the Barons of the Court of Exchequer, to juſtify their own Order; and therefore prayed their Lordſhips would not proceed further againſt him, 'till all Parties concerned might be duly heard.

Feb. 8. The City of London, who are Grantees from the Crown of the whole Honour of Richmond, and Lordſhip of

* *Note*—*The Record is a Survey and Boundary of the Honour of Richmond and Lordſhip of Middleham, which together are much larger than the County of Middleſex, and more than one hundred Miles in Circumference; whereas the Boundaries conteſted by the Lord Wharton and Mr. Bathurſt, are not above two or three Miles thereof.*

of Middleham, finding themſelves intereſted in the Preſervation of the ſaid Record, petitioned the Lords to be heard by their Council againſt the Petition of the Lord Wharton; and their Lordſhips accordingly ordered Council to be heard for the City, on the twelfth of February, being the ſame day that the Council for the ſaid Mr. Squire were to be heard. Anno 2 Ann. 1703.

Feb. 12. Their Lordſhips heard Council for the Lord Wharton and Mr. Squire, (but refuſed to hear Council for the City, notwithſtanding their ſaid Order) and thereupon were pleaſed to order a Trial at Bar in the Court of Common-Pleas, the next Eaſter-Term, by a Jury of Middleſex, wherein this was to be the feigned Iſſue, *viz.*

'Whether the Skins of Parchment directed by Order of the Court of Exchequer, of the fifteenth of July 1702, to be filed, are the perfect, unaltered, exact, and entire Commiſſion and Return, firſt filed in the Court of Exchequer in the ſixteenth Year of King James the firſt.'

And ordered, that in the ſaid Action the ſaid Robert Squire ſhould be Plaintiff, and take the Proof of the ſaid Iſſue upon himſelf, and the ſaid Lord Wharton Defendant: and that the Skins of Parchment, or any Copy thereof, ſhould not be given in Evidence in any Court whatſoever, until the ſaid Trial was over: And that the ſaid Skins of Parchment (being upon the File, by virtue of the ſaid Order of the fifteenth of July) ſhould not be allowed as any Evidence on the ſaid Trial for the Plaintiff, and that after the ſaid Trial, the Verdict given therein ſhould be certify'd and returned by the Court of Common-Pleas into the Houſe of Peers.

'Mr. Squire did not decline the Trial of the Iſſue above-directed, as being conſcious of any ill Practices by himſelf, or any others, or for that he was not able to produce ſufficient Evidence, to prove that the ſaid Record is perfect, unaltered, exact, and entire, as at firſt filed in the Court of Exchequer, in the ſixteenth Year of King James the Firſt, (tho' Mr. Squire could not but think that it was a great Hardſhip to make him Plaintiff in the ſaid Action, to put the Validity of the whole Record upon the ſaid Iſſue, and to oblige him to take the Proof thereof upon himſelf, and all this without his Conſent, or the Conſent of others, who are more immediately concerned in the Preſervation of the ſaid Record) there being better Proofs, in order to find the ſaid Iſſue truly in the Affirmative, to be given for the ſaid Record, than for any one of the moſt authentic Records in any of the Courts of Weſtminſter, (as is verily believed:) for,

'I. In a Decree of the Court of Exchequer enrolled, made in the nineteenth Year of King James the firſt, the

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ſaid Record is cited and referred to, as then on record in the Court of Exchequer.

'II. The ſaid Record is entered and enrolled *verbatim*, in the Book of Enrolments of Surveys, &c. kept in a public Office at Weſtminſter belonging to the Auditor for Yorkſhire, and the ſaid Entry is near as old as the ſaid Record.

'III. The ſaid Record, and particularly the Boundaries of the Honour of Richmond, and Lordſhip of Middleham, (about which only the Diſputes are between the Lord Wharton, and the ſaid Mr. Bathurſt, and the other Defendants) are fairly entered, and remain on record, in an old Book, kept amongſt the Records of the City of London, and the ſame Entry there appears to be made in the Year 1628.

'IV. Divers ancient Office-Copies (and other Copies) of the ſaid Record, and particularly the Boundaries of the ſaid Honour of Richmond, and Lordſhip of Middleham, have been taken, and the ſame were examined with the ſaid Record, when on its proper File in the Court of Exchequer; and certify'd to be true Copies. All which ſaid Entries and Copies do exactly agree with the ſaid Record, now on its proper File. And moreover, there are many other Inſtances, Evidences, and Proofs of the Truth, Validity, and Entireneſs of the ſaid Record.

'But Mr. Squire being apprehenſive that the Houſe of Peers, in making the ſaid Order of the twelfth of February 1702, had aſſumed a Juriſdiction in an original Cauſe, could not (as he believed) comply with that Order, without doing Injury to the Rights and Privileges of the Commons of England; and, for that Reaſon, did not think fit to try the Iſſue as directed.

'Nov. 9. [*Note*, that at the firſt Trial at the Queen's-Bench Bar of the Iſſue directed of Chancery, (when the ſaid Record was given in Evidence) the Verdict, upon full Evidence, was given and found for the ſaid Mr. Bathurſt, Mr. Squire, and the other Defendants; yet the Court of Chancery, (as is uſual where a Right of Inheritance is to be bound) afterwards directed a ſecond Trial to the ſame end as the former, which came on at the Queen's-Bench Bar, in Michaelmas-Term laſt Nov 23. 1703.]

'That at the laſt mentioned Trial, the Council for the Plaintiff, the Lord Wharton, inſiſted, that the ſaid Mr. Bathurſt, and the other Defendants, could not give in Evidence the ſaid Inquiſition and Survey, (tho' on record in the Court of Exchequer) nor any Copy thereof, by reaſon the ſaid Mr. Squire had not tried the Iſſue directed by the Houſe of Peers, the ſaid twelfth of February 1702.

'That, by reaſon of the Premiſſes, the ſaid Mr. Bathurſt, and the other Defendants, were deprived of that ſo neceſſary

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Part of their Evidence, for the ſupport of their Title to the Matters in queſtion, at the ſaid laſt mentioned Trial, and ſo (and for that reaſon alone) loſt their Cauſe, which otherwiſe they could not have done; for that the ſaid Record (backed with the concurring Teſtimonies of ſo many ancient and credible Witneſſes, produced on the ſaid Defendants Behalf) muſt neceſſarily have convinced the Jury (as ſome of them have ſince owned and declared) that the Boundaries of the Manors of Helaugh in Swaledale, and of Arklegarthdale, are as the ſaid Record mentions them to be; and conſequently, the Iſſue and Verdict muſt have been found for the ſaid Mr. Bathurſt, and the other Defendants.' Anno 3 Ann. 1704.

In conſequence of this Petition, &c. the Houſe appointed Committees to inſpect the Lords Journals, as likewiſe the Proceedings of the Chancery and Exchequer Court, with relation to the ſaid Caſe: And upon the whole, came to the following Reſolutions:

Reſolutions of the Commons on the ſaid Caſe.

' *Reſolved*, That the Houſe of Lords taking cognizance of, and proceeding upon, the Petition of Thomas Lord Wharton, complaining of an Order of the Court of Exchequer, bearing Date the fifteenth Day of July, one thouſand ſeven hundred and one, for Filing the Record of a Survey of the Honour of Richmond, and Lordſhip of Middleham, in the County of York, is without Precedent, and unwarrantable, and tends to the ſubjecting the Rights and Properties of all the Commons of England, to an illegal and arbitrary Power.

' *Reſolved*, That it is the undoubted Right of all the Subjects of England, to make ſuch uſe of the ſaid Record, as they might by Law have done before the ſaid Proceedings of the Houſe of Lords?

After this the Houſe of Lords took into Conſideration the Proceedings of the Houſe of Commons, and made the following Reſolution:

Vote of the Lords thereon.

March 27. It is reſolved and declared by the Lords ſpiritual and temporal, in Parliament aſſembled, That the Houſe of Commons taking upon them by their Votes, to condemn a Judgment of the Houſe of Lords, given in a Cauſe depending before this Houſe in the laſt Seſſion of Parliament, upon the Petition of Thomas Lord Wharton, and to declare what the Law is, in contradiction to the Proceedings of the Houſe of Lords, is without Precedent, unwarrantable, and an Uſurpation of a Judicature, to which they have no ſort of Pretence. *.

* *Mar.* 27, 1704. *It is ordered by the Lords ſpiritual and temporal, in Parliament aſſembled, That the Reſolution and Declaration made this Day, with reſpect to the Votes of the Houſe of Commons, in relation to the Judgment of this Houſe, given upon the Petition of Thomas Lord Wharton, the laſt Seſſion of Parliament, ſhall be forthwith printed and publiſhed.*

Matthew Johnſon, Cler' Parliamentor'.

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Towards the latter End of this Month, the Queen coming to the Houſe of Lords to paſs the *Malt-Act*, was pleas'd to make the following Speech to both Houſes:

Queen's Speech.

' My Lords and Gentlemen,

' THE Misfortune of the King of * Spain's being forc'd back upon our Coaſt by contrary Winds, which I hope will loſe but very little Time, does yet make it ſo reaſonable to haſten our Preparations for this Year's Service, that, tho' I am very ſenſible of your Zeal in forwarding all Things relating to mine and the Public Service, yet I cannot but take this Occaſion to deſire you with all Earneſtneſs, that you would give the greateſt Diſpatch to the Buſineſs of this Seſſions ſtill depending, which is ſo neceſſary for the Good of the Common Intereſt.'

About the ſame time, likewiſe, the great Affair of Aſhby and White was depending before the Houſe: A Brief of which Caſe is as follows:

The Caſe of Aſhby and White.

One Matthew Aſhby commenc'd and proſecuted an Action at Common-Law againſt William White Conſtable of Aylesbury, a Borough where Sir John Packington was Lord of the Manor, and the Conſtable of his or his Tenants making, who had refus'd to admit Aſhby's Vote at the Election of Burgeſſes to ſerve in Parliament; and Aſhby (by Direction of my Lord Wharton, and at his Expence) brought this Action againſt White for having by Contrivance fraudulently and maliciouſly hinder'd him to give his Vote at the Election for Burgeſſes for Aylesbury, where Sir John Packington ſtood Candidate: In this Action a Verdict was found for Aſhby in the Country, but Judgment was given againſt him in the Court of Queen's-Bench, which was revers'd upon a Writ of Error brought in the Houſe of Lords, where he obtain'd Judgment to recover his Damages, and afterwards had Execution upon that Judgment. The five other Inhabitants of Aylesbury, John Paty, John Oviat, John Paton, Henry Baſs and Daniel Horn, followed the Example of Aſhby, and brought Actions againſt White and other Aylesbury Conſtables, in order to recover their Damages.

The Speaker's Speech thereon.

' Upon this Occaſion, Mr. Speaker, (Harley) after the Reports were over, told the Houſe, that he thought it to be his Duty to put them in mind of the great Conſequence and Importance of this Matter, and that it behoved them to take very great Caution in their Proceedings, not only that the Grounds and Foundation be good, but alſo that the Method and Manner of treating it, be according to the antient Uſage and Cuſtom of Parliament: And to that end he deſired the Houſe

* *Charles the late Emperor, then upon his way to Spain.*

Houſe would give him leave to ſtate this Matter, as it appeared to him, and according to what occurred upon the ſudden to his Memory, that the Houſe might take proper Methods upon this Occaſion.' Anno 3 Ann. 1704.

Mr. Speaker then proceeded to give the Houſe an Account of the State of Elections by Cuſtom or Common-Law, and that the great Alteration in point of Elections, was in the Beginning of Henry the IVth's time, ſince whoſe Reign the Returns for Parliament have been made by Indenture. That by the Statute of 7 Hen. IV. there is a Method preſcribed of Election and Return, and the Occaſion he took to be this: Henry the IVth came to the Succeſſion of the Crown by the Depoſition of Rich. II. when the Parliament was ſitting. That Parliament was continued to Hen. IVth's time: For tho' in the Rolls it was called a new Parliament, and Returns were made, as by the Sheriffs of the Counties, and alſo by the Boroughs, as if it was a new Parliament; yet it was the ſame Parliament, for they were the ſame Men, and there were too few Days between one Parliament and the other, to have a new Election. But Henry IV. having made ſuch an extraordinary Step, he would not leave it as a Precedent to be found out. Afterwards, when Times were a little more ſettled, in his ſeventh Year, and that Practice was neceſſary to be condemned, it was provided, at the great Complaint of the Commons, that it ſhould be done by Indenture, that the ſame or like Deceit ſhould never be put upon the Kingdom afterwards, and one Part was to be kept below. This continued for about four Years, when there was another Complaint of the Proceeding of Sheriffs, (he ſaid he need not mention the Regulation of forty Shillings a Year, and ſome other things which are not directly to this Caſe;) and upon that there was a Penalty put upon the Sheriffs of a hundred Pounds, which he took to be in the eleventh Year; and it was put under the Enquiry of Judges of Aſſize, and ſo it ſtood all that King's Reign, 'till Henry V. and then there was another Law made for Electors and Elected, that they ſhould be all reſident. Some of the Law-Books give a pretty Conſtruction of it, that tho' there was ſuch a Law, yet the Cuſtom of Parliament was to be the Rule; but he ſaid he thought it to be a better Conſtruction, that it being then reckoned a Service, and a hard Service, none but the Reſidents in the Borough were compellable. Thus it continued, till about Henry the VIth's time, and then if the Sheriffs had made a wrong Return, if indicted or proſecuted at the Aſſizes, there was to be immediate Execution for this hundred Pounds, without any Traverſe. Upon this there was a Statute to allow the Sheriff a Traverſe for this hundred Pound, and that he ſhould not be liable to it till he was legally con-

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convicted; ſo it ſtood till about a Year afterwards, that the Parliament thought it neceſſary to make another Act about 8 Hen. VI. And then there was a great Complaint again of the ill Proceedings of Sheriffs: And the Law was enforced again, and it was declared who ſhould be the Electors; and the Sheriff was made liable to the Penalty of a hundred Pound, and Impriſonment without Bail or Main-Prize, and it was enquirable by the Judges of Aſſize. Another Statute was made the 10th of Hen. VI which enforceth the Manner of Elections; and ſo it ſtood till 23 Hen. VI. when there are two more Statutes, one relating to the Wages of Knights, Citizens and Burgeſſes, and how they ſhould be levied; another reciting the Statute of Hen. V. and Hen. VI. and it ſays, that there were not ſufficient Penalties on Sheriffs, who, beſides that ſometimes they ſent no Writs to Boroughs, made inſufficient Returns, *&c:* And the Mayors and Bailiffs were guilty of the ſame; and therefore, over and above the firſt Penalty of a hundred Pounds, they laid another Penalty a hundred Pounds more, which was to the Plaintiff, with Coſts of Suit; and this was to be tried before the Judges of Aſſize, and at the Courts at Weſtminſter, and at the Seſſions; and the Action is to lie either for a Knight, or Burgeſs, or any other Perſon that would bring the ſame; but within a time limited; *viz.* three Months from the Commencement of the Parliament. Thus Elections ſtood in point of Law till the modern Alteration, within every body's Memory. And he hoped whatever time Gentlemen took this Matter into Conſideration in, they would do it as became the Houſe of Commons, and examine all Particulars, as well as the Judgments of Law, and that they would do what became the Houſe of Commons, and that no body would ſee the Dignity of the Houſe of Commons impair'd. And however Differences were between them in other things, they would be unanimous in preſerving the Rights of the Commons, and of doing it in a right and juſtifiable Manner: And offered to their Conſideration, whether it would not be beſt to proceed in the old Method, by going into a grand Committee for the Courts of Juſtice to conſider this Matter, and that by taking this Courſe, they would walk in the Steps of their Predeceſſors, and avoid many Inconveniencies, which were eaſily to be foreſeen would happen, by taking another Courſe.'

But it being moved and ſeconded to conſider of the ſaid Reports in a Committee of the whole Houſe, the Queſtion was put, and carried, that the Houſe on Tueſday then next following, would reſolve itſelf into a Committee of the whole Houſe, to conſider of the ſaid Reports.

The grand Debate thereon.

Accordingly, Jan. 25. Mr. Freeman being in the Chair, Mr. Brewer thus open'd the Debate. 'Sir, we are now in

Mr Brewer.

a Committee of the whole Houſe upon the Conſideration of the Caſe of Aſhby and White; which I take to be a Matter of the laſt Conſequence to the Privileges of the Houſe of Commons, which I think are dangerouſly invaded by the Lords Pretence of Judicature upon them. But, as I don't doubt every Gentleman here thinks it his Duty to ſupport and maintain the juſt Rights and Privileges of this Houſe, as entruſted by thoſe who ſent us hither; ſo we ſhall do it in ſuch a manner, as will conſiſt with, and maintain a due Correſpondence with the Lords I ſhall open the true State of the Caſe, with the Judgment given upon it in Weſtminſter-Hall, and ſome of the Reaſons, which, in my Opinion, ſupport that Judgment; and then ſpeak to the Reverſal of it by the Lords, (which, with Submiſſion, I take to be a new Attempt of their Lordſhips, to bring this, and all our Privileges before them in Judgment) which, I believe, neither this, nor any other Houſe of Commons will endure, nor want Will or Power to relieve themſelves againſt ſuch an Uſurpation. Anno 3 Ann. 1704.

'The Plaintiff declares againſt the Defendants, that whereas, on the 26th Day of December, in the 12th Year of King William the third, a Writ iſſued to the Sheriff of Bucks, commanding him to cauſe to be elected two Burgeſſes for Aylesbury; the Sheriff directed his Precept accordingly to the Conſtables, to whom it belonged to execute that Precept; and the Burgeſſes being aſſembled, and the Plaintiff duly qualified to give his Vote, he offered to give it for Sir Thomas Lee and Mr. Mayne; but the Defendants, falſly and maliciouſly intending to defeat him of that Privilege, did refuſe to receive it; which he lays to his Damage, and Iſſue being joined, that Cauſe was tried at the Aſſizes, and a Verdict for the Plaintiff, and 51. Damages.

'The Fact being thus tried, the Matter in hand (that is to ſay, whether this Action is maintainable by the Rules of Law or not) was often argued by Council learned at the Bar, and afterwards conſidered by the Judges in the Queen's-Bench; and upon their mature Conſideration, Judgment was given for the Defendants, that is, that the Plaintiff had no good Cauſe of Action.

'Now I underſtand the chief Reaſon was, for that the Right of voting in ſuch Caſes hath ever been, and ought to be cognizable and determinable by the Houſe of Commons, and not elſewhere; for, by the Law and Uſage of Parliament, the Houſe of Commons have heard and determined the Right of their own Elections, and conſequently and neceſſarily the Right of the Electors to vote; and for this purpoſe, at the opening of all Parliaments, a Committee of Elections is nominated of Members of our own, to hear and determine of ſuch Right of Elections, to whom Petitions (after preſented

to

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to the Houſe) are referred; and if any Elector had been refuſed his Vote in the Country, he is, notwithſtanding, allowed his Vote here, in caſe he had Right; and it ſhall avail the Candidate as much as if the Vote had been received below: and the Committee, after Judgment upon the Caſe, report to the Houſe all the ſpecial Matter, and their Reſolutions; where the whole Matter may be afreſh debated, and the Houſe agree or diſagree with the Committee, as ſhall appear reaſonable. So that this Determination and Method of Trial hath two Digeſtions, and more likely to be well founded than that of a common Jury, who we know are made by Under-Sheriffs, and often of Perſons ſo corrupted or ignorant, that new Trials are often granted by the Judges. But it may be objected, that no ſingle Petitioner will be received by the Houſe: In anſwer to this, I ſay he may; and I have known Petitions touching Elections preferred by very few Perſons, and by the ſame Reaſon may by one: I am ſure we have no Order of the Houſe againſt it; and if Gentlemen object, that no ſingle Petition of this nature was ever received, if they will ſhew me when it was offered, I will ſhew them when it was received; I believe they cannot ſhew me it was ever refuſed. But I would ask if they can ſhew me that ſuch an Election as this was ever brought againſt the Officer, as in this Caſe. I am ſure they cannot, and which, in our Law, is allowed a good Argument, that no Action lies; eſpecially it being a Caſe which cannot be preſumed, but may happen very often, almoſt in every Election: And I believe there never was a Parliament called but frequent Occaſions might have been taken for ſuch an Action, and better founded than this of the Plaintiff's, who was a poor Hoſtler, and removed from that Pariſh by the Order of two Juſtices, as being likely to become chargeable. But it ſeems our Anceſtors repoſed a Confidence in their Repreſentatives to have right done them in ſuch Caſe: They ſought not Relief from common Juries. And what is now done by this Attempt? Why, the Judges, upon their Oaths ſay, that they have no Cognizance of the Cauſe; but notwithſtanding, the Lords ſay they have no Cognizance, and reverſe that Judgment; and the Conſequence of that is, the Lords will judge of this our undoubted Privilege, never 'till now drawn into queſtion; and by that Reaſon and Law, the Lords may ſit in judgment upon all other our Privileges, and thereby we become depending upon them; which ſome without doors, I find, are willing to ſubmit to: for that they ſay, where one is deprived of his Right he ought to have Damages, which the Houſe of Commons cannot give. I allow, where one is injured he ſhall have Relief, by our Law, in one Place or other; but we have not one Shop to cure all Diſtempers.

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The Queen's-Bench relieves chiefly in Matters criminal; the Common-Pleas in civil Pleas between Party and Party; the Exchequer in Matters of Revenue; Chancery in Caſes of Fraud; and in the Caſe in queſtion, Relief may be had (as ſaid before) in the Houſe of Commons, by Law and Uſage of Parliament, which all Lawyers know, is a very conſiderable, known and approved Part of the Laws of England. And tho' no Damages are uſually given here, yet the Officer, for Misbehaviour, and arbitrarily refuſing Votes who had Right, may be, and has been puniſhed, by the Power and Authority of the Houſe, and even at Common-Law; as when an Alderman is refuſed by the Mayor, or other Perſon who ought to admit him, the Remedy is by *Mandamus*, which tho' it is chargeable to the Perſon injured, yet I do not know any Damages are given him, otherwiſe than that the Party injured is admitted; which is a Relief, the Alderman having what he complained for: And ſo the Elector; his Vote is allowed as good as if the Conſtable had took it. And, by the way, give me leave to obſerve how ſmall a Relief the new deviſed Remedy, by Damages, is: I dare affirm and demonſtrate, that the Plaintiff, in the Caſe in queſtion, is above 100 l. out of pocket, more than the Coſts and Damages recovered, which I take to be *infælix Victoria*. But if Gentlemen ſay, the poor Hoſtler could not expend ſo much, I believe ſo too, but if at the Expence of any great Man, I think it leſs juſtifiable, to make a Tool of that poor Fellow, perhaps in order to enlarge a Juriſdiction. Anno 3 Ann. 1704.

'I muſt confeſs I take the Caſe of the elected to be much ſtronger than that of the Electors; and yet, in ſuch Caſes, Relief at Common-Law was always denied, as in the Caſe of Sir Samuel Barnardiſton and Soame, there the Sheriff made a double Return: and in the Caſe of Mr Onſlow *, a falſe Return

* *The* CASE *of Denzil Onſlow, Eſq; was tried at the Aſſizes holden for Surrey on Wedneſday the 20th Day of July, in the Year of our Lord* 1681, *at Kingſton upon Thames, before the Lord-Chief-Juſtice of England, Sir Francis Pemberton.*

The DECLARATION.

Denzil Onſlow Eſq; had brought his Action on his Caſe in the Court of Common-Pleas, againſt William Rapley, late Bailiff of the Borough of Haſelmere; thereby ſetting forth, that Haſelmere was an ancient Borough that uſed to ſend Burgeſſes to Parliament, that a Writ iſſued to the Sheriff of Surrey, to cauſe Knights and Burgeſſes to be choſen for the Parliament to be held the 17th Day of October, Anno 31 Caroli Regis. *The Sheriff made a Precept to the Borough of Haſelmere, to chuſe Burgeſſes. That, Auguſt 21* Anno 31 Caroli ſecundi, *the Plaintiff was duly elected one of the*

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Return; and the Persons injured by those Returns were put to very great Charges, and kept long from their Seats in the House, and yet, at Common-Law could never obtain a Relief. The Judges were of Opinion (as they now are in the Case of the Elector) that it was a Matter of parliamentary Cognizance, of which they were not competent Judges. And should we now admit this Matter to be determined by the Courts below, what great Confusion and Inconvenience would

Burgesses, and returned, by Indenture, with Sir William Moore. That the Defendant, intending to deprive the Plaintiff of the Honour and Benefit of his Election, did, by another Indenture, return Sir William Moore Bart. and James Gresham Esq; as duly elected: whereby the Plaintiff was hindered from sitting in Parliament, and put to great Charge to assert his Right, to his Damage of 200 l.

After Not guilty pleaded, upon Evidence given on both sides, at the Trial, the Case appeared to be thus.

The CASE and Evidence.

At the Election in this Borough for the last Parliament at Westminster, there were four Competitors, viz. Sir William Moore, the Plaintiff, Mr. Dorington and Mr Gresham. The Electors meeting and voting, the Poll was demanded, granted and taken: The Defendant took time to peruse and consider the Poll until the Afternoon; and having considered of it, came again to the Place of Election, and declared the Plaintiff and Sir William Moore had the Majority of the ancient and lawful Burgesses, and proclaimed those two to be duly elected, and sealed an Indenture thereof accordingly; and Mr. Gresham being then present, opposed not the same, but desired that Sir William Moore (with regard to his Title and Quality) might be first named in the Indenture, although (as was then admitted) Mr. Onslow had the Majority of him; which was done accordingly, Mr. Onslow readily and generously consenting to the doing thereof.

That about a Week or a Fortnight after, the Bailiff was prevailed with to seal and return another Indenture, whereby Sir William Moore and Mr. Gresham were returned as elected. Whereupon Mr. Onslow's Right to sit was controverted, and he suspended from sitting; and was put to his Petition to the House of Commons, who, upon hearing of the whole Matter, and Consideration had of the indirect dealing of the Defendant and others, declared Mr. Onslow duly elected, and committed the Defendant; and Mr. Onslow sate in the last Parliament at Westminster for that Borough, and that Mr. Onslow had been at great Charges to clear his Election.

First, the Defendant's Council insisted on the Statute of 1 H. 5 cap. 1. That a Person elected must be free, resiant, and dwelling within the Borough; to which it was answered, and resolv'd by the Court, that little or no regard was to be had to that ancient Statute;

would follow? I presume no body will pretend to exclude the Jurisdiction of the House of Commons, in his Case; and yet, if they judge one way, and the Courts below another, and neither have Power to supersede or reverse the Determination of the other, under what Uncertainty will the Officers and all Parties concerned lie? Whereas, in other Cases, where one Court errs, a superior Court reverses; but here, both Adjudications shall stand together, though inconsistent the one with the other. But

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Statute, for as much as the common Practice of the Kingdom had been, ever since, the contrary; and it was the way to fill the Parliament-House with Men below the Employment: And the Objection was disallowed.

Secondly, it was agreed unto by the Parties, and by their Council on both sides, that the Right of Choice of Burgesses for this Borough to Parliament, lay in the Burgage Freeholders resiant, and inhabiting within the Borough, and none others.

Then the Plaintiff's Council insisted and proved, that there voted for him thirteen, having good and unquestionable Votes; unto one whereof, the Defendant's Council excepted, for that he, before the Election, had mortgaged his Estate; which the Party himself, present in Court, denied upon Oath: and the Court was of Opinion, it had not been a good Objection, if true, so long as the Mortgager continued the Possession, and had the Benefit of Redemption in him.

The Defendant's Council said, there voted for Mr. Gresham fourteen, having good Votes: Which, if so, would have made a Majority; but the Plaintiff's Council excepted to six of the fourteen, as being no good Electors, for one of them lived not within the Borough; which was proved, by ancient Reputation and Perambulation, that the House where he lived was left without the Bounds. As to the other five, the Objection was, they were no real Burgage-Tenants; and that, if any Conveyances had been made to them of Burgage-Lands, they were lately made, and fraudulently contrived, to make Votes against an Election: And because the Defendant's Council could not deny but these Conveyances were lately made, the Court put the Defendant to produce and prove them, which was done; and upon reading of them, it appeared, two of the five were made after the Test of the Parliament-Writ, and three of them in order to carry on Sir Philip Floyd's Election in the Borough, about five Years since. Two of them were Conveyances by one Vallor, who had a Garden about thirty Rods, and conveyed to each of his two Sons a Piece of it, containing about ten Rods, of which they had made Jointures to their Wives, each Share being worth, at best, 2 s. per Annum. Another of the five was made by the Father, who had a Close containing two Acres, and made a Conveyance to his Son of about a Quarter of an Acre, which always after lay undivided, and was constantly enjoyed by the Father. Another Conveyance was

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'But 'tis ſaid, in this Caſe, the Action lies, becauſe the Defendant refuſed the Plaintiff's Vote, *Malicioſe & falſo*: I take thoſe to be Words of courſe, and no Evidence of that is given to the Jury.

'Sir, to conclude, the Houſe lately paſſed a Reſolution, that no Lords ſhould intermeddle at any of our Elections: But if this be allowed as Law, they may at the laſt, judge and make (for aught I know) all our Elections. But for my part,

made by a Son-in-law to his Father-in-law, of a Cart-Houſe. The laſt Conveyance was to one Jackſon, of a little Tenement: But it was proved that Collateral Security was given to re-convey, and that the Grantor had repaired. As to all five, there appeared ſeveral Badges of Fraud, as a continued Poſſeſſion in the Grantors, &c. and the ſeveral Confeſſions of the Purpoſe and Intent of making them for the Elections.

The Court cenſured ſuch Proceedings as evil and unlawful: Mr. W, (Recorder of G.) one of the Defendant's Council, ſtood up to juſtify theſe Proceedings, and ſaid, it was Part of the Conſtitution of our Government to do ſo. At which the Court ſeemed very angry, and wondered that any one, eſpecially a Man of the Gown, ſhould ſay ſo, and ſaid, do you think our Government hath no better Conſtitution? With which the Gentleman not being ſatisfied, he was told by the Court, he deſerved to be taken notice of for ſaying ſo, and that he ſeemed to have adviſed to have the thing done.

To conclude the Evidence, the Plaintiff's Council deliver'd into Court ten or twelve ſeveral Conveyances, that were proved by the Party that wrote them, to have been made by Mr. G's Order, to make ſo many Votes at a former Election, wherein Mr. Greſham was concerned; and the Election being over, they were cancelled and delivered up; concerning which, Mr. Greſham endeavoured to ſay ſomething by way of Excuſe, but was told by the Court, it was too bad to be excuſed; and it was well an Act of general Pardon had paſſed ſince this was done, elſe he ſhould have anſwer'd it in another Place. During the whole time of the Trial, the ſame was managed with great Patience and Circumſpection; for, ſo ſoon as the Cauſe was opened by the Plaintiff's Counſel, the Court perceiving the nature of it, commanded Silence and Attention in the Jury: The Court declaring it was of great weight, as great as any that ever came there to be tried. And the Evidence being fully given on both ſides, the Court, by way of Direction, told the Jury, that the Plaintiff need not, as this Caſe is, prove any expreſs Malice in the Defendant; for it ſhall be intended when a Man ſhall do ſuch an evil thing as this is, contrary to his own Knowledge, and Declaration made upon the Election, and afterwards alſo; (for it was proved againſt him, by one or two Witneſſes, that a little time before this Trial, he did confeſs Mr. Cuſſow duly Elected, and that he

part, I am for continuing the Poſſeſſion of this, and all our other juſt Privileges, as derived down to us from our Predeceſſors, who ever enjoyed and exerciſed them as now we ſhould; and I hope before we riſe we ſhall think of ſome Remedies, and not lie wholly under the Power or Mercy of the Lords.' Anno 3 Ann. 1704.

'Sir Thomas Powis. Mr. Freeman, I believe I ſhould hardly have roſe up in this Matter, but that I think it more particularly Sir Thomas Powis.

he had told Mr. Greſham what would come of it.) And the Court further told the Jury, that this was a Cauſe of Moment, and deſerved more than ordinary Conſideration; and that the making Votes by ſuch means was a very evil and unlawful Thing, and tended to the Deſtruction of the Government, and Debauching of Parliaments: And although ſome of the Conveyances were made ſome time before this Election, to ſerve a Turn at a former Choice; yet that they were fraudulent, and void in their Creation, and ought not to be made uſe of at any time againſt any other Perſon; and that it was ſenſeleſs to think ſuch Practices were Part of the Conſtitution of the Government, or to imagine that Perſons whom we entruſt with our Lives and Fortunes ought to be made and choſen by ſuch evil Devices: And that ſuch Practices deſerve to be ſeverely puniſhed, and directed the Jury to give ſignal Damages. Whereupon the Jury withdrew, and after a ſhort Stay, gave a Verdict for the Plaintiff, and 50 *l. Damages.*

And the Court, in the Courſe of the Evidence, having obſerved one Billinghurſt to be much concerned in the Proof and Management of their fraudulent Deeds, conceived him to be privy to much of the Practice thereabouts, and commanded him to ſtay in Court till the Jury had given in their Verdict: which when they had done, the Court required him to find Sureties to appear in the Court of King's Bench next Michaelmas-Term, to anſwer to an Information touching the ſaid Miſdemeanour; and in the mean time to be of good Behaviour, which accordingly he did do; and Sir William Moore, and Sir George Woodruff (whom he had ſerved laſt Election at Haſelmere) were his Sureties. And the Court required the Plaintiff, Mr. Onſlow, to ſee that an Information be preferred; which he promiſed to do: And the Court declared it was a very great Offence, and ſhould be ſeverely puniſhed.

I ſhall give a few Inſtances of what the Houſe of Commons have done in former Ages to puniſh and prevent Evils about Elections.

1. Anno 20 Jacobi, *Doctor Harris, Miniſter of Blechingley in Surrey, for misbehaving himſelf by Preaching, and otherwiſe, about Election of Members of Parliament, upon Complaint, was called to the Bar of the Houſe of Commons, and there as a Delinquent, on his Knees, had Judgment to confeſs his Fault there, and in the County, in the Pulpit of his Pariſh-Church, on Sunday before the Sermon.*

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particularly my Duty to ſpeak to this thing, if it were poſſible, than any other; for in truth, I have had a more particular Opportunity of knowing the Nature of this Caſe, and the Proceedings in it, and what the Conſequences of it will be, than many others have had.

'I muſt acquaint you I was of Council in this Cauſe, in the Houſe of Peers, upon the Writ of Error with White, and the other Conſtables that were proſecuted in this Action, and did to my power defend what I took to be the Rights and Privileges of this Houſe.

'I would ſtand right in the Opinion of every body; for what I did there for my Client, in the Courſe of my Profeſſion, I do not think my ſelf obliged to maintain here: for then it was my Duty to do my beſt for him as his Council, but now he hath done with me, and I have done with him, in this Place.

'It hath been to the great honour of ſome Judges in Weſtminſter-Hall, who have argued in Caſes below, at the Bar, and have been brought on the Bench before the Cauſe hath been determined, that they have argued at the Bar one way, and when upon the Bench, have given Judgment another way, againſt their very Clients, and thereby have done their duty in both Places.

Now,

2. Anno 20 Jacobi, *Ingrey, Under-Sheriff of Cambridgeſhire, for refuſing the Poll, upon the Promiſe of Sir Thomas Steward to defend him therein, kneeling at the Bar, received his Judgment, to ſtand committed to the Serjeant at Arms, and to make Submiſſion at the Bar, and acknowledge his Offence there, and to make a farther Submiſſion openly at the Quarter-Seſſions, and there alſo to acknowledge his Fault.*

3. Anno 20 Jacobi, *the Mayor of Arundel, for misbehaving himſelf in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but packing a Number of Electors, was ſent for by a Warrant, and after, ordered to pay all the Charge; and the Houſe appointed certain Perſons to adjuſt the Charges.*

4. *And laſtly,* 3 Car. 1. *Sir Willlam Wrey and others, Deputy-Lieutenants of Cornwall, for aſſuming to themſelves a Power to make whom they pleaſed Knights, and defaming thoſe Gentlemen that then ſtood to be choſen, ſending up and down the Country Letters for the Trained-Bands to appear at the Day of Election, and menacing the Country, under the Title of his Majeſty's Pleaſure; had Judgment given upon them to be committed to the Tower.* 2. *To make a Recognition of their Offence at the Bar of the Houſe, upon their Knees; which was done.* 3. *To make a Recognition and Submiſſion at the Aſſizes in Cornwall, in a Form drawn by a Committee. See this Caſe in a fol'o Pamphlet, printed* 1681.

'Now, when I have ſaid this, I hope I do ſtand fair and clear, that I do now ſpeak as a Member of the Houſe of Commons. Anno 3 Ann. 1704.

'You are upon a Point which I wiſh had never happened, for there is nothing I enter upon with greater Reluctancy than what looks like a Diſpute with the other Houſe; for no Man pays a greater honour to the Houſe of Peers, and to every Peer there, than I do; however, as I am inſtituted, I ſhall endeavour to maintain the Rights of this Houſe. And I do ſay, if the Peers of England can determine all our Properties at Law, upon Writs of Error, and all our Rights in Equity upon Appeals; and if they can determine all our Elections in Conſequence of this Action (as I am of Opinion they may, if this Action prevails) they have a greater Power than ever that Houſe had in the Days of their noble Anceſtors, when they were in the greateſt Grandeur.

'I will ſhew you what will be the ill Conſequences, and I think it very fit for you to take this Matter into Conſideration, if there be any way to come at it. Firſt, I cannot deny but, generally ſpeaking, a Man has Right to bring his Action at Law; but then I hope, though a Man hath a Right to bring an Action, yet he cannot bring it in detriment to any other Man's Privilege; for if a Member of this Houſe be ſued in time of Privilege, though a Perſon have a Right to ſuch Action, yet he cannot proſecute it in breach of the Privilege of ſuch Perſon, much leſs can a Man proſecute an Action in Breach of the Privilege of this Houſe. And ſuppoſe this ſhould come before the Lords in queſtion, by Writ of Error, and they ſhould be in Poſſeſſion of the Cauſe, ſure every Determination of the Lords, upon a Writ of Error, is not without more ado to be concluſive to the Commons in their Rights and Privileges, ſo as that they may not take an alarm, and be concerned if all their Privileges are about to be taken from them. Suppoſe any Member of this Houſe, (as I think by the Privileges of this Houſe he may,) ſhould, in this Houſe, have juſt Occaſion to take notice of ſome great Miſdemeanor in any great Officer of the Crown, and ſhould aſſert Matters highly intrenching on the Honour of a Peer of England; and ſuppoſe, when the Parliament was up, the Peer ſhould bring his Action of *Scandalum Magnatum* againſt the Member, at Law, for Words that he had ſpoken here, and lay them as ſpoken elſewhere (for in a tranſitory Action he may) and he ſhould juſtify that they were ſpoken in the Houſe of Commons, where, by the Privileges of the Houſe, Freedom of Speech is allowed; and ſuppoſe Judgment in that Caſe (as in this it was) ſhould be given againſt the Plaintiff, and afterwards this, by a Writ of Error, ſhould be brought before the Peers, and they ſhould

reverſe

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reverſe this Judgment, and give Judgment for the Plaintiff; can any thing be more deſtructive to the Conſtitution of Parliament, if ſuch a Caſe as this ſhould happen? And muſt the Commons in ſuch Caſe ſit down under it?

'Suppoſe any Man ſhould preſume to arreſt any Member as he was going into the Houſe of Commons, nay, the Speaker himſelf, and afterwards he is committed by order of the Houſe, and the Perſon committed ſhould bring his Action for taking him into Cuſtody, and the Serjeant who took him into Cuſtody ſhould plead this matter, and the Judges give Judgment for him as they did for the Defendants in this Caſe, and by Writ of Error, it being brought into the Houſe of Peers, they ſhould reverſe this Judgment, and give the Plaintiff his Damages; will any one ſay, we could not take notice of this? Would it not deſtroy all our Rights and Privileges?

'So no doubt in this Caſe, though they have gone by way of Action at Law, and Judgment in Weſtminſter-Hall, and Writ of Error in the Houſe of Peers, it cannot be ſaid, but, if it concerns our Rights, we may take notice of it. In the Caſe of Sir John Elliot, *&c.* the Commons declared the Judgment, 5 Car. I. illegal, and againſt the Privilege of Parliament.

'It is my poor Opinion, it is our Right (and I think no body can doubt it,) for we are in poſſeſſion of it, to determine our own Elections; and I would be glad to be acquainted when firſt we began to hear and determine our own Elections: I believe no body will ſay with certainty when we did not.

'I know we have a turbulent Author, who generally affected to be in the wrong, and, though a Member of this Houſe, made it his Buſineſs to write againſt their Privileges, and was always hunting among the Records of the Tower, from whence he brought away a great deal of Dirt with him, and yet could never pretend or produce more than two Inſtances, where the Commons reſorted to any other place for the ſettling the Right of their Elections: The Man I mean, is Mr. Prynn; he takes Occaſion to do it from what is ſaid by my Lord Chief Juſtice Coke, (who, with your Favour, I muſt take notice ſo far, as to ſay he was not only a very great Man in our Profeſſion, but had been Speaker of the Houſe of Commons in his time) and he, in his 1 Inſt. fol. 116. and 4 Inſt. 1 cap. fol. 14, 15, and 23. aſſerts, That the Law of Parliament is as much part of the Law of the Kingdom, as any other, and indeed the higheſt: He calls it *Lex & Conſuetudo Parliamenti*; and ſays, this is a Law that each Houſe hath poſſeſſion of, and judgeth by, and each Houſe is a Houſe of Judicature; and he puts upon this a great many Inſtances, and ſome of them may ſeem ſtrange to

those who have run upon the Commons of late. He tells you of a Case 8 Eliz. (at that time Onslow was Speaker, and it is in fol 19, of the Book of the House of Commons of that Year) one Long was returned a Member for Westbury; and it being complained of that he came into the House by undue Practices, it was enquired into by the House of Commons, and found that he had given four Pounds to the Mayor of Westbury; and they having examined and tried this matter, did not only expel Long, but they fined and imprisoned the Mayor of Westbury, *Secundum Legem & Consuetudinem Parliamenti*. Mr. Prynn, the Author I mentioned, supposeth there was a time when the Commons used to apply to the King, in case wrong was done in the matter of their Elections; and in his Comment on the 4 Instit. 31. goes back to the 12 Ed. II. there the King was pleased by Commission to appoint several Persons to hear the matter of an Election. He pretends too, another Instance, and that is in Henry the VIth's time, in the Case of Huntington; and there was a Petition to, and a Commission from the King in like manner. The latest of these Instances is above two hundred Years ago, and neither of them make any thing for a power in the Lords to determine the Elections of the Commons; but, on the contrary, rather for a power to be delegated by the King; and the Instances are but two. Now, I say, Sir, we are, and have been in possession of this Right for a very great length of time, and have it confirm'd to us by Act of Parliament; for the late Act of 7 and 8 of King William, hath, in effect, declared, that the determination of the Right of the Electors is in the House of Commons: for it says, that the Sheriffs and Officers of all sorts, shall follow the last Determination of the House of Commons, as their Rule and Guide in such Cases. And surely nothing is more absurd, than to say, that this House shall Examine, Try, and Determine who are elected; and yet Westminster-Hall, and the Lords, shall Examine and Determine the Right of the Electors. How can any one examine the Election, but the first step he takes must be to consider and determine who are the Electors? And the determining the one, is determining the other.

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'I would trouble you a little with the Reasons they give why this Action should lie. It hath been said, and I think it is true, for the Honour of England, and I believe it hardly can be found to fail, that where a Man hath a right, and a wrong done him, he is somewhere to have a Remedy; but now let us see the Application of this Rule. Are they not by the same Law that settles the right, and declares the wrong, to enquire where the Remedy is to be had? For, though you have a Remedy, you mistake that which is the

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proper Remedy; and the ſame Law that ſettles the right, and declares the wrong, gives the Remedy; you muſt therefore go to the place where the Law directs, for your Remedy, not where yourſelf would deſire the Remedy. Therefore ſays my Lord Coke, in his Preface to his 4 Inſtit. and likewiſe fol. 14, and 15. we have ſeveral Juriſdictions, ſome Eccleſiaſtical, ſome Temporal, &c. ſome governed by one Law, and ſome by another; and all muſt have their Rules and Bounds, which muſt be obſerved. If your Right be Eccleſiaſtical, as for Inſtance, before the Statute of Tithes, could you in Weſtminſter-Hall have brought your Action? Or if Iſſue had been joined in ſuch an Action, and the Parties had gone to Trial, will any body ſay but that the Judges muſt have arreſted Judgment, and ſaid that 'twas out of their Juriſdiction? If a Lord of a Manor ſhould refuſe to admit a Man, to whom a Surrender is made of a Copyhold Eſtate, the Lord has done him wrong, and damage too; but yet he cannot bring his Action at Law for it, for it is an equitable Right, and he muſt go to a Court of Equity for his Remedy; and ſo I could put a thouſand Inſtances, but I will not ſpend your time. So that I ſay, it is not enough to ſay you have a Right, and muſt have a Remedy, and therefore you may bring your Action at the common Law; but you muſt ſeek it in a proper Place, though perhaps Coſts and Damages, and a Trial by a Jury, may be more deſirable to the Party.

'Now, in this Caſe I would know, whether this is not a Matter of parliamentary Juriſdiction, and alſo a parliamentary Right? Is any thing more plain? He that hath Right to vote, hath a Right to ſend a Perſon to repreſent him, and ſit in Parliament; therefore it is a parliamentary Right; where then muſt be your Remedy? In the Houſe of Commons, where you have a Right to ſend a Perſon to ſit and repreſent you; there you may complain, I was denied my Vote, or miſuſed upon the Election. This, by the Law of Parliament, ſhall be examined here, and for this purpoſe you conſtantly appoint a ſtanding Committee of Elections. Indeed I cannot but wonder at the bringing of this new-invented Action; for if there be any thing certain in the common Law, it is this, that where you claim a Right to any thing, it muſt be founded upon common Uſage in that Caſe, or in ſome Caſe that carries the ſame Reaſon, and is juſt like it; for the common Law, generally ſpeaking, is nothing elſe but common Uſage. Now let us ſee for the Uſage in this Caſe, and whether there has been any thing like this Action before. Say they, how do you know but ſuch Actions have been brought before? I do not ſee that there can be a ſtronger negative Proof in any other Caſe than in this; for

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we have had Parliaments, as appears by our Statutes in print, for five hundred Years, and we have had Parliaments in every Reign ſince, and in ſeveral Reigns a great many Parliaments: And let us conſider, whether this Caſe would not have happened frequently in five hundred Years, in ſo many Elections in Counties, Boroughs, and Cities where there are ſuch an infinite number of Electors? And therefore this Caſe muſt frequently have happened if ſuch an Action lay at Law. If it be asked, how do I know that ſuch an Action hath not been brought before; I anſwer, it is wonderfully plain there never was ſuch an Action brought before; for as we have our Acts of Parliament in Print, ſo we have faithful Reports of all our Law-Caſes, which we call the Year-Books, and which are Memorials of all Caſes ſo long back as from Ed. II's time, that is 400 Years, followed by a Series of Reports till this time, and are now grown ſo numerous, that they become a Burden: And I will deſire any Gentleman of the Law here, or in England, to ſhew me the footſteps of any ſuch Action as this, or of this kind till now, ever brought before. We have always ſaid, our Fore-Fathers were wiſer Men, and greater Lawyers than we are; and ſo they were: but ſuch an Action as this never entered their thoughts. Anno 3 Ann. 1704.

'But it may be ſaid, how does it appear that there was Occaſion for theſe kind of Actions formerly, for Men heretofore were unwilling to ſerve in Parliament, they were hired, and almoſt preſt to it, and it was hard to get Men to come up? I anſwer, It was ſo far otherwiſe for many Years paſt, that ſo early as Henry VI's time, there were great Conteſts about Elections, and the Sheriffs in thoſe days were apt to do wrong, as appears by 7 H. IV. cap. 15. And therefore 11 H. IV. cap. 1. there was impoſed one hundred Pounds Penalty to the King, on the Sheriff that did not do his duty, according as the Statute does direct: So that it does appear there was Occaſion for theſe Actions, if they had lain by Law; and yet you will find that never, till 23 H. VI. did it enter into the thoughts of any Man, that an Action at common Law could be brought for an Injury in an Election; and therefore that Act recites, that there was not before that time, a ſufficient Remedy for the Party grieved, and therefore gives a hundred Pounds to the Party, and Coſts, if a Knight, and forty Pounds if a Citizen or Burgeſs, and that by a Law made on purpoſe to help the Party to an Action, where there was no ſuch Remedy before. Thus it reſted till the famous Caſe between Nevill and Strode, in 2 Siderfin, fol. 168. (in that time they ſent five Knights of the Shire out of Berkſhire.) Mr. Nevill brought his Action againſt Strode the Sheriff; and he alledged that he being one of the five choſen for that County, Strode had maliciouſly and falſely refuſed to return him, &c. and

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the Jury gave him fifteen hundred Pounds Damages. This Action made a great Noiſe, and the Judges looked upon it as a great Novelty, and thought fit to conſult the Parliament in it; * (they uſed to conſult the Parliament in former days, in matters relating to the Parliament,) and the Judges heretofore, when they were asked their Opinion in difficult matters relating to the Parliament, would ſay, this is above us, and therefore to be decided by Parliament. And this Caſe being referred to the Parliament, they looked upon it as ſo extraordinary an Attempt, that though Mr. Nevill had a Verdict for fifteen hundred Pound Damages, yet he never got a Farthing of the Money, or any Benefit by the Verdict: *Sed ibi dormivit.*

'After this, came the great Cauſe, that hath been mentioned, of Soame and Barnardiſton; and methinks this deſerves very much our Conſideration, and how far the Determination of the Houſe of Peers ought to be a Rule in this very Caſe. That Cauſe ſet forth with great Proſpect of Succeſs; Sir Samuel Barnardiſton, in that Caſe, did not ſlight the Determination of the Houſe of Commons, but firſt petitioned this Houſe as the proper place to determine his Right, and had it decided for him, that he was the Perſon duly elected, and the other Return was taken off the File; and then he brought his Action at common Law, and ſet forth this whole matter, and that the Sheriff falſly and maliciouſly returned another with him, whereby he was kept out of his Right, *&c.* a long time, and put to very great Expence and Coſts. This came to be tried at the Bar of the King's-Bench, and there was a Verdict given for Sir Samuel Barnardiſton

'* *Sir Humphry Mackworth, in his Vindication of the fundamental Right of the Commons of England, page 27. ſaith, In the Caſe of Strode and Nevill, An.* 1655. *in an Action on the Caſe, againſt the Sheriff for a falſe return, to the damage of* 2000 *l. after a Verdict for the Plaintiff and* 1500 *l. Damages, the Court of the King's Bench adjourned the Caſe into Parliament,* propter difficultatem, *whether the Action did lie or not? Where it is to be obſerved, that it was not adjourned into the Houſe of Peers, but into the Houſe of Commons, as the only proper Judges, in all Caſes of that nature concerning Elections; ſo careful were they of the Rights of the Commons.*

'*And let not the iniquity of thoſe times of Rebellion be objected to this Inſtance; the Argument from thence extremely confirms the Right of the Commons; for if it be conſider'd that Cromwel had then created a new Houſe of Lords, and wanted nothing but a Houſe of Commons to eſtabliſh his Uſurpation, that to this purpoſe he had formed a new Model of an Houſe of Commons, and overturned the Method of Elections, depriving all the Boroughs of their Rights, and cauſing the Choice and Returns of Members to be made by the County; yet the name of a Houſe of Commons remained; and even that was ſo reverenced in thoſe days, that none would attempt to deprive them of their eſſential Privilege, of judging of Elections: No influence could biaſs the Judges; they thought it ſo inherent, that they would not preſume to intermeddle in it.*'

nardiſton for eight hundred Pounds. This was looked upon as a great Caſe, and my Lord Chief-Juſtice Hale bid all Perſons about him take notice, that they did not determine the Right of the Election, for the Judgment in that Caſe belonged to the Parliament; but ſaid, ſince the Houſe of Commons had determined the Right, he thought they might follow their Judgment to repair him in Damages, and ſo gave Judgment for the Damages the Jury had given the Plaintiff. Anno 3 Ann. 1704.

'This Caſe was looked upon as ſo improper for the Common Law, that upon a Writ of Error brought into the Exchequer-Chamber, that Judgment was reverſed, becauſe the common Law could not any way intermeddle with Elections to Parliament, further than was directed by Act of Parliament. It might have been ſaid, and I know it was ſaid, that the Reverſal of this Judgment, was by an extraordinary high Hand: And therefore upon the Revolution, in the very beginning of King William's Reign, Sir Samuel Barnardiſton brought a Writ of Error in Parliament, complaining that in the Exchequer-Chamber, they had reverſed this Judgment unjuſtly, and went upon theſe Reaſons, as may be obſerved from the Journal of the Houſe of Lords, which were the Reaſons of ſome very few proteſting Lords.

'Firſt, Becauſe it was a denying Sir Samuel Barnardiſton the Benefit of the Law, which gives Relief to all Wrongs and Injuries; and is a very great Damage to the Plaintiff, and therefore he ought to be repaired.

'Secondly, Say they, if it ſhould be allowed that Sheriffs and Bailiffs may make falſe Returns, and no Remedy but a hundred Pounds Forfeiture, it would be of dangerous Conſequence, and might tend to the packing of a Houſe of Commons, which may overturn the whole Conſtitution. But the Peers then did not think theſe Reaſons ſufficient for this new Action at common Law, and accordingly the Houſe of Peers affirmed the Judgment of Reverſal in the Exchequer-Chamber, and ſaid, the Judgment was well reverſed, for that no ſuch Action did lie at the Common-Law, though the Injury done did tend to the Plaintiff's Damage; and all other Miſchiefs which are now ſuggeſted, were inſiſted on; and thus it ſtands to this day. And yet now it is ſaid upon the ſame Reaſons, the Action does lie for this Perſon, though he be only an Elector, and muſt receive much leſs damage than the Perſon elected; and there is no one Reaſon for the Elector, but holds more ſtrongly for the elected. The elected can't maintain an Action, and yet now it is clear that one of the Electors may, though he can have no ſubſtantial damage; for if a Man comes and gives his Vote, (as here in this Caſe) 'tis not in the power of the Officer to hinder him of the Benefit of it; for his Vote will be as well given as if the Officer had put it down, and this with reſpect both

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to the Perſon who gave the Vote, and him for whom he voted; and ſo really it is no ſubſtantial damage to any Man.

'The next thing I ſhall mention to you, is another Caſe of Mr. Onſlow: He brought his Action againſt the Sheriff of Surrey for making ſuch a Return upon him, (I believe I have the Gentleman in my Eye who brought that Action) he declared in the ſame manner, that it was done falſely and maliciouſly, and had a Trial and a Verdict; and yet notwithſtanding, the Court of Common-Pleas, (being governed by Sir Samuel Barnardiſton's Caſe) did unanimouſly, 33 Car. II. ſay, we muſt not preſume to determine the Merits of Elections, or Returns, there is a proper Juriſdiction for it; and they gave Judgment againſt the Action, and I think he hath acquieſced in it ever ſince. I am ſure I have heard no more of it; the Reaſons given by the Court, appear in the Report of the Caſe in 3 Levinz, fol. 29, and 30. and are worth the reading.

'There was a Caſe a Year ago between Prideaux and Morris, in the County of Cornwall. Mr. Stratford was returned, and Mr. Prideaux brought an Action in the Common-Pleas, in the time of King William, againſt the Viander, for making a falſe Return againſt him to his great damage, and laid it with all Aggravation. This went to a Trial in Cornwall, and there was a ſpecial Verdict found; and the queſtion was, whether this Action would lie before the Commons had determined the Right of Election? And the whole Court unanimouſly gave Judgment, that the Action could not be brought, till the matter had been firſt brought before the Houſe of Commons, and they had determined the Right.

'Now here is a total ſilence in all Books of the Law, that any ſuch Action as this is doth lie: Here are the Acts of H. 6. and King William, which provide Remedies at Law, becauſe there was no other Proviſion before. Here are not only theſe ſolemn Judgments in Weſtminſter-Hall, but the Judgment of the Houſe of Peers, in the Caſe moſt like to this of any that can be thought of, that no ſuch Action doth lie: And yet I cannot tell how, there are, abroad, Perſons that endeavour to run upon the Houſe of Commons, and uſe them ill on all Occaſions, and are zealous for this Cauſe, which ſeems to be ſet on foot to undermine all our Elections, and bring them to another Judicature.

'Now ſee the Conſequence: No Man ought to have a ſoot againſt him, two Judgments at once in two ſeveral Courts; whereby one may puniſh him at the ſame time for doing a thing, and the other for not doing it. I believe ſuch Proceedings would be looked upon as barbarous even in Turkey, and yet that will be juſt our caſe: A Gentleman petitions the Houſe of Commons, and ſays, the Right is in ſuch

ſuch a Set, or Sort of Men; as for Example, in all the Free- Anno 3 Ann.
men, or free Burgeſſes; and that, according to that way of 1704.
Election, he was choſen, and not the Perſon that is returned: and this is determined by the Committee of Elections, and afterwards by this Houſe againſt him that petitioned. This Man goes immediately and brings an Action in Weſtminſter-Hall againſt the Officer that returned the other; nay, every one of theſe Perſons that he affirmed the Right of Election to be in, bring their Actions, and it comes into Weſtminſter-Hall to be tried, and the Jury find the Right to be in theſe Men, as he has alledged, contrary to the Determination of the Houſe of Commons, and Judgment is given againſt the Officer in every one of theſe Actions, for the Men you have determined the Right not to be in. You cannot ſet one of theſe Judgments againſt the other; I cannot defend my ſelf in Weſtminſter-Hall, by ſaying, the Houſe of Commons have determined that theſe Men, who ſue me, have no Right to vote. There is nothing like this in the World; two independent Courts cannot controul one another, but both may go on together in the ſame Cauſe; and both having a Right to judge, one judges one way, and the other the other, and the Officer is crucified between them.

'Let it be conſider'd again, that at this rate none but Knaves, or Beggars, will be Mayors, or Bailiffs in an Election-Year: For ſuppoſe as at Weſtminſter, where I think there are ten thouſand Electors: Or ſuppoſe it be as in ſome Towns near Wales, for one of which I have the Honour to ſerve, where the Deſcendants of every Burgeſs claim a Right to vote, and by Conſequence they will bring it in time almoſt to all the Sons of Adam; for all the Sons, and all the Daughters Husbands, and all their Deſcendants claim a Right to vote. Now what a miſerable Caſe muſt that Officer be in, when Perſons ſhall come from Eaſt, Weſt, North and South, and ſay their Pedigree is ſo and ſo, (for they are good at Pedigrees in thoſe Countries,) yet, what a Condition is he in? he is bound to determine whether they have a Vote or not; and tho' he is no Lawyer, or Herald, yet however he is bound to give Judgment one way or another, at the Peril of an Action: And ſuppoſe but a hundred Men ſhould bring their Actions againſt the Officer, what Man can ſtand a hundred Actions, tho' he be in the right? There are not only theſe Difficulties in the Caſe, but there is Revenge: and in popular Elections there are thoſe Heats, and the Voters engage with that Animoſity, that the loſing Side next day will be ready, perhaps only for Revenge, to ſend for a Multitude of Writs, and have the Pleaſure of ruining the Officer who was againſt them, tho' he was in the Right; for every one

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has a Right to bring his Action whose Vote was disallowed, tho' it should be found at last that he had no Right.

'As to the Words *falso & malitiose* laid in this Declaration, which seem to be a great Ingredient in this Action, I agree, in some Cases where there is a Jurisdiction, these Words may make a great Aggravation of the Offence; but they cannot make a thing unlawful that is lawful, nor give a Jurisdiction where there was none before: For no Man will say, if a Person should bring an Action at Common-Law for a Legacy, and alledge, that the Executor, tho' he had sufficient Assets, yet he *falso & malitiose* refused to pay it; that would give a Jurisdiction to the Courts of Common-Law. These Words are *Verba Clericorum*, Words of course for the most part. Besides, how dangerous and hazardous would it be for an Officer, tho' ever so innocent, to depend upon these Words; when every body knows that Falsity and Malice rest in the Mind, they are in the Imagination, and the Jury that are to try this Action, are at liberty to judge with what Mind the Officer acted; that would be the hardest thing in the World for an Officer to undergo in every Action. It would be enough for the Jury to presume it was done maliciously, (seeing few Mayors, or Bailiffs, but have their Inclinations, and give their Votes themselves for their Friends,) because the Officer made an Interest for the other Side; and the Consequence of this new-invented Action, if countenanced, will be, that every triennial Parliament will bring a triennial Harvest to Westminster-Hall. I speak against my own private Interest, if that was to be considered. Elections, without Actions, keep up Animosities too long, so that they are hardly healed in three Years time; but these Actions will help to vex and worry Corporations from three Years to three Years, and Mayors and Bailiffs will be the most miserable Men in the Kingdom, and ought to run their Country rather than stand a popular Election; whereas the Officer is accountable to you for his Behaviour at the Election.

'This is not a Matter that stands in need of the Aid and Assistance of Westminster-Hall, that they should invent a new Action and Remedy, as if there was a Failure of Justice. Has any one come with a Complaint against any Officer to this House, and they have not been willing to hear it? Have not the Committee a Right to hear and report Matters with respect to the Electors, as well as to the Elected? And have not we known that the Electors, tho' but a small Number of them (as in a late Case of this sorry Town of Aylesbury) about five, I think, of the Electors came and complained, and their Complaints were fully heard. And if any single Elector should come with a Petition, and re-

preſent that he was abuſed by an Officer, or ill-treated by any Mayor, or Bailiff at the Election, I do not think but the Houſe would be ready to do him Juſtice: And they have a Right ſo to do, for the Officer is accountable to them for his Behaviour. 'Tis not now only ſo practiſed, but always was ſo; for in the ſame Treatiſe of my Lord *Coke's*, *4th Inſt. Fol.* 49. he ſays, that they will make him change his very Return; they will make him raze out the Name of one, and put in the Name of the other. So that they have a Juriſdiction adequate in this Caſe; and ſurely if they can hear the Complaint of ſeveral Electors, they can hear the Complaint of any one Elector. I would not trouble you with Arguments that may be proper in Weſtminſter-Hall, becauſe we are here upon Matter of our Conſtitution; but I know no Action more obnoxious to the true Reaſon of the Common-Law, which abhors Multiplicity of Actions; and a Man ſhall never have a particular Action, for that which naturally draws on Multiplicity of Actions, and may be reformed in a more compendious Manner. Upon this Reaſon that famous Caſe in 5 *Rep.* called *Bolton's Caſe*, is founded: If a Man builds a Dove-Houſe near a common Field, where Men make all their Profit by Plowing and Tillage, and therein keeps a great Number of Pidgeons that live upon his Neighbour's Corn, is not this a great Wrong and Injury to them? And yet no Action lies; for, if one Man that is wronged thus may bring his Action, a great many more may do the like, and ſo there will be infinite Actions: therefore it ſhall be preſented in the Court-Leet, as that Book ſays. So there is that Caſe of Williams in the ſame Book, where the Lord of a Manor had a Chapel for himſelf and his Tenants to repair to, and to hear Divine-Service, within the Pariſh of Aldbury: He brought his Action againſt the Vicar, who was obliged to officiate, for that he had neglected, *&c.* tho' he had uſed time out of mind to officiate, and had an Allowance for it: Says the Caſe, if this Action ſhould be allowed, all the Tenants and Servants of the Lord might have the like Action, and ſo there would be a Multiplicity of Actions, and therefore he ſhall not have this Action; but, if it had been to have been performed in his own private Houſe or Chapel, he alone might have had an Action. But ſince it would draw on a great many Actions, which may ruin any Man, therefore the Remedy muſt be taken in ſuch manner as it is given where there is public Offence. In the Caſe before us, every Perſon is choſen *pro Bono Publico*; for tho' he be choſen for a particular Place, he ſerves for the whole Kingdom; and for that Reaſon you ſhall not proceed by way of Action, but in ſuch manner as it hath been always uſed, where the whole thing ſhall be examined at

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once, and all determined upon one Petition, wherein all the Parties injured may join inſtead of a multitude of Actions.

'I ſhall not propoſe to you any thing, but hope you will at leaſt come to ſome Determination that may aſſert our Right in this Point; that this Door may not be open to bring a new Juriſdiction, to examine and determine whether any of us ſit here rightfully or not.

'Tis a ſtanding Order of the Houſe, that no Peer hath a Vote in the Election of a Commoner; but in the next Elections, if this be allowed, every Peer may vote, for they are Freeholders, and many of them Burgeſſes and Members of Corporations, and they may all come and demand their Votes, and if refuſed, bring their Actions. Theſe and many more Inconveniencies are obvious, if this Action ſhould be allowed, and I believe it may have a great Effect upon our Conſtitution. Very much more might yet be ſaid, but I have taken up too much time already.'

Sir John Hawles, (Solicitor-General, *Temp.* Will. III.)

'Mr. Freeman, we are jealous of our Privileges, and I think we have juſt reaſon ſo to be; but we muſt take care that that does not carry us too far out of the way. I would not have it taken for granted, that whatſoever is ſaid againſt the Lords here, tends to aſſert the Privileges of this Houſe, or that what is ſaid for the Lords here, is againſt this Houſe. I am as much for the Privileges of the Commons of England as any Man, and I own they have loſt a great deal of Power; I think the Commons had a great Power, when the greateſt Part of the Judicature of this Government was their ſole Right: Nay, if a Peer had had a Matter of Conteſt with another Peer, or with a Commoner, and Iſſue was joined, that Iſſue was to be tried by Commoners, and not by Peers. 'Tis true, if the Proſecution of a Peer was in a capital Matter at the King's Suit, it was to be tried Part by Commoners and Part by Peers; the Bill of Indictment was to be found by Commoners, but the Iſſue was to be tried by Peers: But if a Peer was proſecuted in a capital Matter by a Commoner, or Peer, as by an Appeal, the Iſſue was to be tried by Commoners. I muſt confeſs, as to the Lords Juriſdiction in Matters of Equity, the Commons have great reaſon to be jealous, becauſe, there, all Facts, as well as Law and Equity, come to be tried and judged by the Lords alone.

'Sir, I ſay, when all Facts were tried, and moſt of the Officers of Government were choſen by the Freeholders of the County, the Commons were ſomewhat greater than now they are: when they had the Election of the Sheriffs of the Counties; when they had the Election of what they called Conſervators of the Peace, Officers that were the ſame with our now Juſtices of the Peace, with this Difference only, thoſe the Commons made, theſe the Crown makes. The

Commons

Commons had a great Power when they were to elect their Captains that led them out to War, which heretofore they did, and had a Right to do, till it was taken away from them by the Act that ſettles the Militia, though I own it was diſuſed many Years before. The making of Sheriffs is now placed in the Crown; we have nothing left now, but Matters of Trials in particular Caſes, and even that is ſo far crampt, that the Jury is returned by an Officer that the Crown puts upon the County. Anno 3 Ann. 1704.

'But yet I am not for carrying things farther than we have a Right to do; I am for keeping what we have, and for that Reaſon I am not for encroaching upon the allowed Juriſdiction of the Houſe of Lords; we have always allowed them a Right to hold Plea of Writs of Error. The Parliament in Hen. IVth's time, did declare the Right of Judicature to be in the Houſe of Peers; and I never found any Inconvenience in it, if the Peers kept only to Matters of Law, and left the Facts to be tried by the Commons; nor did I ever know that Right of the Lords queſtioned till now. A great deal hath been ſaid for, and againſt the Right of bringing this Action; I do not think that that is now the Queſtion: the Queſtion is, Whether a Judgment being given in the King's-Bench, a Writ of Error does not lie in the Houſe of Lords? But whether the Lords did right, in giving that Judgment they have now given in the Caſe before you, that is another thing. I ſpeak to the Right of holding Plea of this particular Writ of Error; no body hath denied but that they have a Right to hold Plea of a Writ of Error in general, upon a Judgment given in Weſtminſter-hall; but, ſay they, the Lords ought not to have done it in this particular Caſe; and ſeveral Reaſons have been given for it.

'Firſt, Here is the Privilege of the Houſe of Commons in queſtion in the Caſe: That hath been argued and inſiſted on, but I confeſs, that Argument does not influence me. The Lords have held Plea of a Writ of Error, in which the Privilege of the Commons hath been in queſtion, and the Lords have done Right to the Commons in it, particularly in that Matter of the Parliament of 1640, when ſome were ſuppoſed to have done irregular things in the Houſe of Commons, and were proſecuted for it by Information in the King's-Bench, and were fined in K. Charles I's time; whereupon a Writ of Error was brought in the Houſe of Lords, and that Judgment reverſed in the time of King Charles II. There the Lords did Right to the Commons in the Matter of Privileges of the Commons, for it was for laying Hands upon the Speaker in this Houſe; and I think every body commended what was done in that Matter by the Houſe of Lords, and no body ever ſaid but that they had a Right

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o to do. Some things are not to be come at otherwiſe, than by a Writ of Error in the Houſe of Lords; and I believe if you look a little back, there have been Judgments given in Weſtminſter-hall, not only in Matters of, but againſt the Privilege of the Commons; and theſe Judgments ſtand unreverſed, though I think they are fit to be reverſed, and I know no other Method to do it but by Writ of Error in the Houſe of Lords. I think there is one Judgment upon an Information againſt the Speaker, for licenſing Papers to be printed, which he did by Order of the Houſe.

'There is another Inſtance of a Perſon taken into Cuſtody by Order of this Houſe; it was the Caſe of Mr. Topham Serjeant of this Houſe: The Party brought his Action; the Serjeant pleaded his Warrant, that it was done by Order of the Houſe of Commons, and Judgment was given againſt him, and this Judgment ſtands unreverſed.

'Now what Method have you to reverſe theſe Judgments, but by Writ of Error? If you think to do it by a Bill in this Houſe, that muſt likewiſe paſs the Houſe of Lords, and ſo will be the ſame thing as a Writ of Error.

'Another thing is ſaid, that this Perſon was not damnify'd; or if he was, there are ſuch a number of Perſons who were then likewiſe damnify'd, that may bring their Actions, that no body will execute ſuch an Office. I think that Argument ought not to prevail, for at that rate you will allow the Officer not only to be a Judge, but the ſupreme Judge, and the Parties damnify'd ſhall be without Relief; he may do what he pleaſes, and he ſhall never be queſtioned afterwards, ſave in this Houſe, which I will conſider by and by. 'Tis agreed, you may puniſh an Officer that misbehaves himſelf in matters of Elections, and that is practiſed now very much; but at the ſame time you puniſh the Officer, the Perſon damnify'd hath no Satisfaction, though our Law allows Satisfaction, in caſes where he that did the wrong ſhall not be puniſhed, and allows Satisfaction in all caſes where a Perſon is puniſhable, if another hath received a particular damage.

'A Man is liable to be fined to the King or Queen, that is a Puniſhment; but if he pays ſo much to the Party damnify'd, that is Satisfaction. If a Man's Horſe breaks into another's Ground, he ſhall not be puniſh'd, but the Perſon damnify'd ſhall have Satisfaction: But in this Caſe you allow the Officer ſhall be puniſhed, but you will not allow the Man injured any Satisfaction for the Damage he received; which cannot be ſupported by Reaſon, or by the Authority of any particular Caſe.

'In all Caſes I take it to be true, where a Man is puniſhed for doing another Damage, the Perſon damnify'd ſhall have

have Satisfaction. But that Rule does not hold true in the contrary. Anno 3 Ann. 1704.

'It is ſaid there are a great many Perſons concerned, and if you give every one an Action, there will be no end of theſe Actions, and therefore none ſhall have an Action. This is a ſtrange Argument: If a Man injures one, or two Perſons, each ſhall have an Action for their reſpective Damages; but if he injures an hundred, none of them ſhall have an Action: as if when a Man is moderately injurious, he ſhall make Satisfaction; but if he is extravagantly injurious, he ſhall be ſcot-free, and make Satisfaction to none. This reſts to be made good either by Reaſon or Authority, which hitherto hath not been done. The Caſe cited, I own, is true; but you muſt take it with this difference, if any thing is done which might have been of Damage to a hundred People, but was of Damage to none, none ſhall bring their Action, though the Criminal ſhall be puniſhed; but where there is particular Damage done to any Perſon, an Action will lie for the Damnification of that Perſon. If a Man digs a Pit, any Man may fall into it, and no Perſon ſhall bring an Action for that; but if any Perſon doth fall into it, and hath particular Damage by it, he ſhall bring an Action and have Satisfaction. And with Submiſſion, that Argument will not hold, that becauſe a Perſon might be ruin'd, if he be obliged to make Satisfaction for the wrong he hath done, therefore he ſhall not make Satisfaction to any particular Perſon he hath damnify'd.

'It hath been ſaid, admitting it to be ſo, that the Party ought to have Satisfaction, yet he ought to take his Remedy in a proper Court; as if a Legacy was given, an Action would not lie in the Queen's-Bench for it; which is true. But it would have been well if that Gentleman had told us which was the proper Court to give Satisfaction, for the wrong ſuppoſed to be done in this Caſe; if the Queen's-Bench be not the proper Court, what Court is? 'Tis ſaid the Houſe of Commons is a Court, I was always of Opinion it was ſo: 'Tis a Court of Judicature, my Lord Coke ſays, and a Court of Record. I wonder, when all this is allowed, it ſhould be ſaid this Court hath not a power to adminiſter an Oath to a Witneſs; I think that was never deny'd to any other Court whatſoever. Every Court of Record has power to adminiſter an Oath; but though this be a Court of Record, this cannot, it hath not that power. It would have been very well if thoſe who are againſt this Action, could ſhew us that this is a Court that can give Satisfaction; ſome Courts can puniſh, but can't give Satisfaction, whereof I think this one; Satisfaction was never given here that I know of; was it ever? or pretended to be had here? In the firſt Inſtance

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Inſtance, 'tis true, this Houſe hath puniſhed, and by ſuch Puniſhment compelled the Delinquent to make Satisfaction to a Perſon, by increaſing, or remitting ſuch Puniſhment; but that is not the Caſe before us.

'It hath been ſaid there has been no Inſtance of this kind of Action brought; and that the Court of Queen's-Bench have declared they have nothing to do with the Buſineſs of Elections, for that the Right of Elections ought to be determined here, and for that purpoſe the Declaration of the Lord Chief-Juſtice Hale, in the Caſe of Barnardiſton and Soame, has been cited. I muſt confeſs I can't but wonder at that Caſe; we did lately think that the Judgment given in the King's-Bench in that Caſe, was rightly given; and afterwards, when it was reverſed, People were aſtoniſhed at the Reaſon of it; and more when that Judgment of Reverſal came to be affirmed in the Houſe of Lords. No body hath ever ſaid why that Judgment was reverſed; I do not ſee but, on the ſame Reaſon, ſeveral Judgments within theſe few Years, nay, even in this Reign, may be reverſed likewiſe; for the Court of King's-Bench, in that Caſe, did not pretend to a Judicature of determining the Right of Elections; the matter in that Caſe had been determin'd before in this Houſe; but they only gave Damages for the wrong ſuſtained, that was all the Court did in that Caſe, and yet that Judgment was reverſed. I believe there hath been ſome Judgment given by this Houſe, within theſe twelve Months, that where the Houſe hath determined the Right of Election, the Party grieved ſhall be allowed to maintain an Action at Law for his Damnification.

'But I take it there is a difference between the Caſe of Barnardiſton and Soame, and this preſent Caſe. Time was, when it was doubted, where a Man was Elected, and the Officer refuſed to return him, whether the Perſon elected was damnified or not. 'Tis very certain, heretofore Perſons were not ſo ambitious of ſitting in this Houſe as now they are; and ſome Perſons purchaſed Charters of Exemption, to be excuſed ſitting in this Houſe: And ſo it had been practiſed in the Houſe of Lords. The Act that hath been mentioned before, expreſly commands, that the Perſon choſen ſhall come and be preſent in Parliament. And afterwards there was a Penalty put upon ſuch as were choſen, if they did not appear here; to which another Puniſhment was added, which was, that the Perſon elected, if he did not come hither, ſhould loſe his Wages. It was not reckoned a Damage that any Perſon was not returned a Burgeſs to ſit here, but a Kindneſs; but that did not hold ſo in the Caſe of an Elector. Every body agrees, as the Electors had a Right to chuſe, ſo there was no Statute to compel them ſo

to

to do; but they looked upon it not only as their Right, but their Intereſt, to be preſent at the Elections. And none can ſay but it is a Man's Intereſt, to make choice of ſuch a Perſon to ſerve in Parliament, (who hath the power over his Eſtate, and Life too for aught I know,) as he could truſt. No body ever doubted that a Perſon who had a Right to vote, had an Intereſt, and might be damnified if his Vote was refuſed. So that none of the Caſes that have been put of the Right of the Perſon elected to ſerve in Parliament, as Knight of the Shire, or as Burgeſs, come up to the Caſe in queſtion. Anno 3 Ann. 1704.

'I would ſay one thing as to the Damnification of the Perſons elected; there is a late Act that gives double Damages where the Return is contrary to the laſt Determination. Now, I do take it, that Act ſuppoſes that a Man might have been damnified before; and if he was damnified before, he was ſo by the Common-Law, for no Statute gives him any Damages: 'Tis true, that Statute gives double Damages, but ſtill that Statute ſuppoſes there was a Damage before, and builds upon that Foundation; ſo that with Submiſſion, that very Statute runs againſt all the Caſes that have been put as to the Perſons elected.

'Tis ſaid, at this rate, the Lords may come to vote in Elections. I am of Opinion the Lords have no Right to vote in Elections for a Knight of a Shire or a Burgeſs; and the Reaſon I go upon is this, every Perſon who had a Right to vote, ought to have contributed to the Expences of him that was elected; if he was a Freeholder, he was an Elector for the County, if a Burgeſs, for the Borough; and the Expences of the Knight of the Shire were to be levied of all the Freeholders, and the Expences of the Burgeſſes upon all that were reſident in the Borough. But the Lords were excuſed from that Charge, they were not to be contributors to the Expences of a Knight of the Shire, or Burgeſs, becauſe they were of another Houſe. There was a Law made which ſays, that for Lands purchaſed by any Lords, ſuch Lands ſhould continue chargeable to the Expences of Knights of the Shire, as they were before ſuch Purchaſe; ſo that 'tis plain before that Act, the Lands the Lords were ſeized of, or purchaſed, were excuſed from that Charge.

'But, Sir, I think this matter is not to the Caſe in queſtion. This is nothing but a collateral Action for Damnification, whereof the Conſequence is not much, not above five Pounds; tho' I acknowledge the ſmallneſs of the Sum does not influence this Caſe. Nor is the queſtion, whether the Lords have done right or not, in reverſing the Judgment given in the Queen's-Bench: *Humanum eſt errare.* If they have a Jurisdiction, we can't juſtly complain; tho' I am of Opinion they have done right: I think the Plaintiff in this Caſe was damnified,

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damnified, and I think the Court of Queen's-Bench ought to have given Judgment againſt thoſe who did him the Injury, for the Damage he ſuſtained; and I think the Lords have done right in reverſing that Judgment, and in giving ſuch Judgment as the Court of Queen's-Bench ought to have given.'

Sir Edward Seymour.

'Sir, 'Tis enough for me that we have the Law on our ſide, and we are very much obliged to the Pains and Underſtanding of thoſe learned Gentlemen that opened this Debate, in preſenting us with a true ſtate of our Diſeaſe; it only remains now for your Prudence, to apply a Remedy. And I cannot but take notice, that this is an Action without any Precedent to warrant this Proceeding; and I believe it might have remained ſo ſtill, (for I don't think there was Virtue enough in the Cobler of Ailesbury, nor had he Purſe enough) if a Lord had not acted that part.

'For my part, Sir, I do not think this to be the ſingle Inſtance of the Houſe of Lords, we have reaſon to complain of: I think in a great meaſure, by their Proceedings, they ſeem to hold forth, That the Axe is laid to the Root, and that they have a diſlike of this Houſe of Commons, and endeavour to get rid of them. I ſhall not inſtance in Particulars, but I hope there is one you will not let go, without applying ſome Remedy to; and that is, that noble Repreſentation in which they have vilified you to the higheſt degree, and lay all the Miſchiefs of the laſt Reign, and this, at your door. I could ſhew you, there is nothing in it but ſtuff, *populum fallere*; and we ſee the Conſequence of it, and what Pains and Endeavours they have taken to diſperſe it all over the world, to make Impreſſions upon the People. But that which I would have ſome reſort to, is this, that theſe worthy Perſons that have ſpoke before, tho' they have truly repreſented the State of our Condition, yet they have been very tender of applying a Remedy.

'It does, I think, conſiſt of two parts; one is what relates to the inferior Courts, the other to the Judgment of the Houſe of Lords upon this Writ of Error. Now there is a Right to bring a Writ of Error, the Learned admit; but I would take away the Foundation, and make this Declaration:

'That no inferior Court below ſhould preſume to intermeddle with the Elections of the Houſe of Commons; and I am ſure then there will be no Foundation for a Writ of Error. In the next ſtep, with relation to the Judgment given in the Houſe of Lords; 'tis true, the Lords make a great Complaint, that in matters of Parliament we have addreſſed, without adviſing and conſulting with them: I will not ſay how far 'tis juſtified by their Proceedings; I need not remind you of the Addreſs they made without you, when

you

you addreſſed againſt my Lord of Worceſter; before you had preſented your Addreſs, they preſented a Counter-Addreſs to yours. But I take the Diſtinction to be here, 'tis one thing in matters of State, and another thing when the matter depends between the two Houſes: Where 'tis a matter of State, with relation to the Queen's Prerogative being violated and invaded, as you are her great Council, you are to adviſe the Queen in that matter, and not let any thing of that kind paſs upon her. Anno 3 Ann. 1704.

'But however I would go the regular way, by condemning this Judgment, in relation to the Houſe of Lords; and, after you have made that Condemnation, I would apply to the Houſe of Lords, to ſee if they would recede from this Judgment of theirs. But I am afraid Arguments or Debates will help your Caſe but little, you muſt have recourſe to Remedies that are in your own power. We ſee what they did upon the laſt Occaſion, when they thought their Privileges were concerned; they adjourned, and all to prepare the way to make the World believe they were injured, and prepare them for their Proceedings afterwards.

'And I ſay, this is not a thing that falls out by Chance, but carried on by all their Power, to repreſent you as inconſiderable, and to make you uſeful for nothing but giving Money, and then to ſend you home into the Country. But if you do not keep the Power in your own Hands, you will be without Remedy. I conclude with what I mentioned in relation to the Courts below, to declare that they have no Power to intermeddle in Matters of our Elections.

'I ſhall not pretend to follow that honourable Gentleman near the Bar, in all the ſteps he hath made, tho' I think I may be as regular as he. I think he hath only ſhewed, that there is not ſo much Reaſon in this Caſe to find fault with the Lords, but that it is neceſſary to find fault with them one way or other. Marquiſs of Hartington, afterwards Duke of Devonſhire.

'I think this is a matter of great Conſequence, and as long as I ſit here, and as long as I live, I ſhall be as tender of the Privileges of this Houſe as any body. I think 'tis upon the due Balance of both Houſes, that the Safety of the whole does conſiſt; and I muſt confeſs, I think the Liberty of a Cobler ought to be as much regarded as of any body elſe; That is the Happineſs of our Conſtitution.

'I think it was very well obſerved by an experienced Member, that this Writ came very regularly before the Lords: If ſo, then I think the queſtion is between us, and the Perſons that elected us; and I think, tho' Gentlemen would not formerly allow of any Diſtinction between the Privileges of the Houſe, and thoſe of the People of England, yet they muſt allow it now, or they can't complain that this Action

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is any Prejudice to this Houſe. For when a Perſon offers his Vote at an Election, and is not admitted to give it, and upon ſuch refuſal brings his Action in the Courts in Weſtminſter-Hall, (which I take to be the preſent Caſe,) if giving judgment upon it be contrary to the Privileges of this Houſe, then 'tis pretty plain, that our Privileges do interfere with the Rights of the People that elected us

'I ſhall plainly give you my Opinion in this Caſe: I can't think this Action to be a Breach of the Privilege of this Houſe; For, Sir, the party grieved, can be no way relieved, but by applying to the Law: and I think the learned Gentleman below, is out in all his Inſtances; for he hath given an account of People injured applying to you, but they were Candidates, and certainly that was their proper Remedy; but in the Caſe of an Elector, I don't ſee he can have Satisfaction by applying to you.

'Gentlemen talk of the Law of Parliament; I can't ſee how that can give any Interruption to the Law of the Land, that it ſhall not do right to the Party grieved. How ſhall a Man, injured in the manner I have mentioned, receive Satisfaction, by applying to the Parliament? 'Tis true, the Officer offending may be puniſhed, but the Party injured can't receive that Satisfaction he would in the Courts below, by giving him his damages.

'I think this is a matter of great Conſideration, and it is neceſſary to conſider well of it, and not to determine raſhly. I think it may be of uſe to us, ſince there are Judges who have been of Opinion, that the Subject ought not to have his Remedy in this Caſe. A Judge that will, out of Fear, or any Regard to one Houſe, do contrary to his Oath, I believe at another time will be influenced by the other. I think 'tis the duty of a Judge to act according to Law, and not be afraid of either.'

Mr. Lowndes.

'Sir, there is no doubt but all the Judges, (as hath been ſaid) and every body elſe, are obliged to behave themſelves according to the Laws of the Land: But the Queſtion is, what is the Law of England in this Caſe? If the Houſe of Commons has an original Right to determine all matters concerning Elections of their own Members, (as it hath been always underſtood to have) and if we have a power to puniſh Officers for making falſe Returns, or any other Misfeazances committed by the returning Officers; then it will not be neceſſary, that the Judges in Weſtminſter-Hall ſhould have any Juriſdiction at all, in the matter now in queſtion; and if they have none, then by Conſequence the Lords will have as little by Writ of Error.

'I do confeſs, Sir, when I firſt heard of this Caſe, it gave me ſome apprehenſion that it might be of fatal Conſequence (by

(by reaſon of the Novelty of it,) to your Privileges, which are indeed the Privileges of the Commonalty of England, which we repreſent. But ſince I have thought of it from time to time, and it hath been better opened by the learned Gentlemen that have ſpoke in this Debate, I conceive our coming to ſome Reſolutions declaratory of our Right in this Affair, may preſerve the Liberties of this Houſe, and of all the Commons of England, who have entruſted us with the Preſervation of their Rights. Anno 3 Ann. 1704.

'I think the learned Gentleman over-the-way took his ground too narrow; I might yield him this Point, that where there is a Writ of Error brought from a Judgment in Weſtminſter-Hall, in Caſes where a Writ of Error lies, and where that Court and the Houſe of Lords have a Juriſdiction, there the Houſe of Lords are at liberty to give what Judgment they pleaſe. But I have read, The Houſe of Lords is not an unlimited Juriſdiction, but is bounded, as well as the Courts of Weſtminſter-Hall, by the Law of England. I ſpeak it with the greateſt reverence, that the regal Power, (which is the moſt ſupreme in England) is obliged to the Obſervance of the Laws; and it would be abſurd at the ſame time to ſay, that any Part of the parliamentary Conſtitution is not limited by the known Laws of the Land, or the Laws and Cuſtoms of Parliament; and I doubt not but it will appear, a Writ of Error doth not lie, and never did lie before the Lords in ſuch a Caſe: And ſo it comes at laſt to this Point, what is the Law of England in this Caſe? And I will tell you my Thoughts of it.

'I have read and learned, and I believe it is true, that Matters of Parliament are determined by the Laws and Cuſtoms of Parliament; and I believe there is as good an Authority for it as there is for Writs of Error, or any thing elſe; and that this Law and Cuſtom of Parliament is a principal Part of the Laws of England, and to be learned by Experience and Precedents, and I reckon that we muſt come to them at laſt. Now, Sir, let us ſee what Experience or Precedents we have to found this Juriſdiction of the Houſe of Commons upon, for examining and determining Matters concerning their own Elections. 'Tis true, we have no Journals extant before Ed. VI's time: And there is a Book they call Seymour, I think it is a Book of no great Authority, and if it be, there is but a ſmall Matter in it. I have read it over carefully myſelf more than once, and find only Titles of Bills depending, and when they were read; and all I learned from it was, that ſometimes Bills in thoſe Days were read four times. And, Sir, there is as little concerning Elections in Queen Mary's Reign; but in the beginning of Queen Elizabeth, you have the Matters of Elections plainly ſet down, and ſo they have

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been ever ſince. And from that time to this it hath been a ſtanding Rule in the Houſe of Commons, in the Beginning of every Parliament, and (as I take it) of every Seſſion, to appoint a Committee to examine all Matters concerning Elections. Now, if the Right of Elections is not a Matter concerning the Election, then I own my ſelf under a Miſtake: but if that be a material Part, and comprehended within the general Words, and if thoſe Committees have from time to time proceeded to examine the Right of Electors, and this Houſe hath proceeded from time to time to give Judgment in ſuch Caſes, ſometimes according to general Qualifications ſettled and adjuſted in the Houſe, and very frequently upon examining and conſidering the Rights of particular Votes; then I think we have as good Authority for the Juriſdiction of this Houſe, in the Matter of theſe Elections, as can be had for any thing whatſoever.

'I do ſay, in this Caſe, we ought to take our Ground and Foundation upon the Right which the Commons of England have, and ever had by Law and Cuſtoms of Parliament, to be exerciſed by the Repreſentatives of their own chuſing; which Right is grounded upon manifold Precedents and conſtant Uſage. For if we have a Power to hear and determine the Right of the Electors; and to puniſh Officers for abridging them of their Right, and give Satisfaction to the Party, which moſt evidently appears, not only in our Journals but by a continued and uninterrupted Practice, time out of Mind; then I think we need look no further.

'I do ſay, that from time to time there has never been a Seſſion of Parliament but this Power has been exerciſed; and in your Committees they have often come to Reſolutions to determine the Right of all Electors, and frequently of particular Electors; and for that purpoſe only they have examined whether Perſons had Burgage-Tenures, or have paid Scot and Lot, or have been Freemen, and other Circumſtances neceſſary for the Information of the Committees; and as Matters have appeared, they have judged them qualified or unqualified: And where the Votes of Perſons having Right have been offered, tho' refuſed at the Election, the Committees have uſually allowed thoſe Votes as if they had been given; and upon their Determination the Houſe have agreed with the Committee very frequently, and ſometimes have diſagreed with the Committee, as the Merits of the Cauſe have appeared to the Houſe. So that nothing is plainer than that the Houſe of Commons have, from time to time, exerciſed this Juriſdiction in all the Parts of it; and ſometimes Elections have been tried at the Bar, and determined by the Houſe upon ſuch Trial.

'Then how comes this Action to be brought in Weſtminſter-Hall?

ſter-Hall? I have conſider'd that Point, and take nothing to be plainer than this, that Weſtminſter-Hall never had a Power to meddle with Elections, but where, by ſome ſpecial Act of Parliament, you have given them Power. I know that there are ſome Opinions that Elections have been tried in Chancery, and in the Houſe of Lords; but I cannot find any thing of that nature ever ſettled, though ſome Attempts have formerly been made that way. I know that Witneſſes have been carried up ſometimes to the Houſe of Lords Bar to be ſworn, but the Trial of Elections, and of the Right of the Electors hath always been in the Houſe of Commons; ſo that here would be no Defect of Power or Juſtice if nobody elſe meddled in this Matter. Anno 3 Ann. 1704.

'Then conſider what Acts have altered this original Right; I think there are two that are moſt material to be conſidered; one is that of 23 of H. VI. cap. 15. What is the Importance of that? It takes notice, that convenient Remedy for the Party grieved was not ordained in the former Statutes againſt Sheriffs, Mayors and Bailiffs offending; whereby one would infer, that the Parliament in thoſe Days did not think or know any thing of the Remedy now endeavoured to be ſet up in Weſtminſter-Hall and the Houſe of Lords. And this Statute provides, that if any Sheriff do contrary to the Statutes about Elections, he ſhall incur the Penalty of the former Statutes, viz. one hundred Pounds to the King, and a Year's Impriſonment, and ſhall forfeit a hundred Pounds more: To whom? to the Party that ought to have been returned; and if he do not ſue, there is an Action given for the ſame to any body elſe. And a Mayor or Bailiff, for a falſe or undue Return, is to forfeit to the King forty Pounds, and forty Pounds to the Party that ſhould be returned; and if he do not ſue, then a popular Action is given for the laſt Penalty: So it is plain, by this Statute, no Action is given to the Voter, who had his Remedy in the Houſe of Commons. Your Anceſtors were ſo careful of your Liberties, that they never truſted their Elections to all Perſons; ſuch as held in Villenage, all cuſtomary Tenants who held at the Will of their Lords, and might be influenced by them, and, (as I take it) Tenants by Eſcuage, 'till Eſcuage was reduced to Certainty, were excluded, and afterwards all Freeholders under forty Shillings a Year; and when the Officers were by Law to admit ſome Votes and reject others, they were to uſe the beſt of their Judgments, without being liable to a Multiplicity of Actions, (unleſs in the Caſes I have mentioned,) but for their Defaults were always reſponſible to the Houſe of Commons.

'Let us conſider then the Statute in King William's time, I think it is in the ſeventh Year of his Reign; there the Statute

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tute takes notice of the Injury done to Gentlemen by double and falſe Returns, and thereby a double Return is made a falſe Return; and by the Statute 'tis provided, that if any returning Officer return contrary to the laſt Determination of the Houſe of Commons, of the Right of Election; ſuch Return is thereby adjudged to be a falſe Return, and void.

'This Statute of the ſeventh of King William, admits the very Determination of the Right of Election to be in the Houſe of Commons; it does not ſay the Determination of the Election, but of the Right of Election. I will endeavour to avoid Repetition.

'But how does this Matter ſtand? By the Law and Cuſtom of Parliament, which is a moſt material Part of the Law of England, the Houſe of Commons have the Juriſdiction in theſe Matters of their Elections; but, by one or two Statutes, the Houſe of Commons have given Power, in one or two Caſes, to proceed in the Manner therein preſcribed; but none of the Caſes allowed by thoſe Statutes, are like the Caſe of this Man at Ailesbury, for he is not a Perſon who has ſuffered becauſe he was not duly returned, nor the Perſon mentioned in 7 Willielmi; nor is his Action founded upon any Statute; ſo that this Caſe is left out of the Statutes, and it muſt be determined according to the Law and Cuſtom of Parliament.

'As to the Caſe of Mr. Nevil, it never came to be determined in Parliament: We read it was put off to the Parliament becauſe of the great Weight of it; and the Judges were of Opinion that it was a Matter too high for them. And in the Caſe of Mr Onſlow, where the Caſe of Mr. Nevil was cited, they poſitively ſaid, it was a Matter of too great Preſumption for the Judges to meddle with it.

'Then how comes it to paſs, if this Action might have been brought at Common-Law; I ſay, how comes it to paſs, that this Action was never brought before? Certainly that is an Argument it never lay, for there muſt have been Occaſion for ſuch an Action, if the Common Law would have maintained it. But the Judges, who knew beſt the Grounds and Reaſons for this pretended Action, have refuſed meddling in this Matter, becauſe it concerned the Parliament, and the Parliament had not entruſted them with it. As to the Caſe of Barnardiſton and Soame, firſt adjudged in the King's-Bench, the Reaſon was, becauſe it had been adjudged in Parliament; for Sir Samuel Barnardiſton had a Majority by near a hundred, and the Houſe of Commons had tried the Cauſe, and gave him his Right of ſitting in the Houſe; ſo that one would have thought that he had liberty to have gone into Weſtminſter-Hall. But afterwards this Judgment was reverſed in the Exchequer; and Judge Ellis, in his Argument, ſays

ſays plainly, that the Right of determining Elections belongs to the Houſe of Commons, and the Houſe of Commons have determined it for Sir Samuel Barnardiſton, and for that Reaſon you ought to affirm this Judgment. Anno 3 Ann. 1704.

'This Matter was brought, preſently after the Revolution, into the Houſe of Lords, and when it came there, all but five or ſix Lords were for affirming the Reverſal. Now, Sir, by reading the Reaſons of theſe five or ſix Lords that diſſented, we may eaſily infer what were the Reaſons that induced the whole Houſe to affirm the Reverſal. Two Reaſons were given; firſt, ſay they, becauſe otherwiſe there will be a Defect of Juſtice. One may infer, if theſe five or ſix Lords were of Opinion that there would be a Defect of Juſtice, all the other Lords were of Opinion there would be no Defect of Juſtice. The five or ſix Lords that diſſented ſaid, that the Plaintiff ought to have this Action by the Common-Law; certainly if the other Lords had been of this Opinion, they would have maintained the Action, but they concluded no ſuch Action did lie, becauſe no ſuch Action was given by the Common-Law.

'I take this Matter to be of infinite Moment, and I think there is no Degree or State in this Realm but what is bound by the known Laws of this Land, ſo that they have no Juriſdiction in this Caſe, then I do not ſee how a Writ of Error can give them Juriſdiction. Sir, I appeal to you, and all the Gentlemen here, whether what hath been ſaid on one ſide hath been at all anſwered by the other: If an Action of *Scandalum Magnatum* ſhould be brought againſt a Member, for what he has ſaid in this Houſe, no doubt but that Member would plead the Privilege of this Houſe, and 'tis to be hoped the Judges would allow it, and put the Plaintiff off *ſine Die*. But notwithſtanding, a Writ of Error, according to this Doctrine might be brought, and the Lords might give Judgment that this Action does lie, and then what would become of youa Liberty of Debate? This is an Inſtance worth your Regard.

It hath been told you how the Lords have taken notice of the Privileges of this Houſe, in the Caſe of Hollis and Elliot. Let that be ſet in its true Colours, and ſee whether any thing can be drawn from that Caſe to fortify the Judgment lately given in the Houſe of Lords. There was a Diſorder in the Houſe of Commons and the Speaker was violently forced back into the Chair, and ſcandalous Words againſt the King's Privy-Council and Judges, were uttered by Elliot, Hollis and others, and upon that a Proſecution was brought, 5 Car. *primi*, againſt thoſe particular Gentlemen in Weſtminſter-Hall; as well for the Words ſpoke in the Houſe of Commons as for the Force; and Fines were ſet upon them. This Matter, after

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after the Reſtauration of Charles II. was brought before the Lords, at a Conference, and they took notice of the Priviledges of this Houſe, not to ſet them aſide, but confirm them; and their Lordſhips declared the Judgment to be illegal, and the Freedom and Privilege of Parliament, and deſired the Lord Hollis to bring the Roll before them by Writ of Error; and ſo, by Agreement, the Judgment was reverſed, as being againſt the Freedom of Speech in Parliament, allowed by Strowd's Act; which their Lordſhips acknowledged to be declaratory of the ancient and neceſſary Rights and Privileges of Parliament. Their Lordſhips then would not let any Matter appear upon Record, to the deſtroying the Commons Privileges; and I wonder how this Precedent comes to be cited, to juſtify a Proceeding which tends directly to take away your Privileges.

'I wiſh with all my heart the Houſe would have appointed ſome Perſons to have ſearched Precedents, and I am ſure they would have found an infinite Number to be produced, to have juſtified the Power of the Houſe in this Caſe, how it hath been in their power, time out of mind, how they have a Power to puniſh Officers, and in ſome Inſtances they have given Damages.

'I remember one in my time; Mr. Tankred cauſed a Perſon to be brought hither, and he cleared himſelf; and the Houſe (as I remember,) made an Order, that, as he was the Occaſion of the Man's coming up, and had done him an Injury, he ſhould make him reparation, and he was forced to do it by paying him a Sum of Money.

'Not that I would go ſo far as to ſay, that this Houſe is a proper Court for impoſing Fines: But if they are not a proper Juriſdiction for the Buſineſs of their own Elections, I think they have no Juriſdiction at all. I will not ſay this Houſe has a Power to fine: I know we read ſomething of that in your Journals, but I think thoſe Fines came to nothing, becauſe there was no Means to eſtreat them, or cauſe them to be levied; and ſo that Matter has ſlept ever ſince, and I hope, will for ever.

'But not only your Freedom of Debate, but Right of ſitting in this Houſe, is concerned in this Caſe: And if you have not a Power to determine Matters of Elections to this Houſe, I wonder how any Author comes to ſay this Houſe has any Judicature at all; for if they have not a Juriſdiction to this, they have no Juriſdiction to any purpoſe whatſoever.

'If this Point be ſettled, that this Power belongs to the Houſe of Commons, the next Conſideration will be how to attain it; and in this, I hope Gentlemen will take ſuch ſteps as are proper for them, and for thoſe they repreſent; for we are ſent here *ad tractandum*, &c. in the Name of thoſe we repreſent

repreſent: And we have but a delegated Power, and can't, without Breach of Truſt, give up the Rights of the Commonalty. For my own part I have taken an Oath to preſerve the Privileges of the People that choſe me, but, without ſuch an Oath, ſhould be of Opinion that I cannot give up this Privilege which I am to execute on their Behalfs; but I will uſe all the lawful and juſt Methods I can to come at it, and I think you may do this without interfering with the Houſe of Lords, or the Judges. There is no doubt but the Judges in Weſtminſter-Hall are bound to take notice judicially of your legal Proceedings here; and if you come to make a Declaration, That the Power of hearing and determining all Matters concerning Elections, does belong to the Houſe of Commons in Parliament; I doubt not but they will take notice of it, as becomes them. And give me leave to ſay, no body can help bringing this Action, as this was done; for a Perſon may take out a Writ and declare upon it, and carry it down to Trial, without the Privity or Knowledge of any Court; and then, when the Cauſe is tried, the other ſide comes and moves in Arreſt of Judgment, and the Court gives Sentence. But I wiſh the Defendant had demurred, and then that would have put it as a Point of Law to the Judges; and if they had determined it judicially for you, I believe it would have gone no further. For it is one thing to determine it upon Demurrer, and another thing when the Cauſe has been tried and Damages given, to have the Court's Opinion *ex poſt Facto*.

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'The Judges determined the Action does not lie; but as Matters ſtand now, perhaps in like Caſes, there will be brought a Writ of Error before the Lords, and they will give ſuch a Judgment as they have given now, for aught I know. I ſhould not think it proper to come to any Queſtion now, by which you ſhall determine your Right, if you are not fully ſatisfied about it; but it ought to be conſidered farther. The Law and Cuſtom of Parliament is to be found out by Experience and Precedents: But if you are ſatisfied, then I think the proper Queſtion is, that by the Law and Cuſtom of Parliament, the hearing, examining and determining all Matters concerning Election of Members to ſerve in the Houſe of Commons, is to be by the ſame Houſe. I think that is to be your Queſtion, or to that Effect.

'The Conſequence will be, if this be Part of the Law of England, as it plainly is, you may as well ſtand upon that Declaration, as upon any new Law to be made by Parliament, if you could get it: But I believe you have no great Reaſon to expect a new Law in this Caſe to paſs in the Houſe of Lords. Then what would you do? If you ſhould try to get a new Law and fail, it will be conſtrued, that you had not

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this Power before, but endeavoured to get it, and the Houſe of Lords denied it you.

'But 'tis plain and clear you have this Power already, and a ſufficient Ground to ſtand upon; and I doubt not but Weſtminſter-Hall will take notice of it, and the Houſe of Lords too: If they do not, [Here Mr. Lowndes was interrupted by a Noiſe made by ſome few of the Members, who ſaid, What then? but he proceeded] I ſay, if they do not, it will be time enough to confer with them afterwards: And give me leave, I am not afraid to ſay, if a private Man, much more the Houſe of Commons, have the Law of England on their ſides, let them be undermined ever ſo much, one way or other they will obtain their Right ſooner or later. The Rights of the People of England are ſafer in the hands of their Repreſentatives than any other; if they do not like them, they can turn them out and chuſe new ones; but they cannot do ſo in the Caſe of the Lords.

'I beg pardon for my great Prolixity: I take it to be of Importance to avoid all Conteſts with the Houſe of Lords, and with Weſtminſter-Hall, and I think you may do it, by propoſing and adjuſting a plain Declaration of your Right by the Law and Cuſtom of Parliament.'

Mr. Solicitor-General, (Sir Simon Harcourt, afterwards Lord Harcourt, and Lord-Chancellor.)

'After what hath been ſaid at large concerning the Law in this Caſe, eſpecially ſince it hath received no Contradiction in any Inſtance whatſoever; I will avoid the Repetition of what has been already offered, and endeavour to ſhorten your Debate, by bringing it ſomething toward a Point. It hath been ſaid, that the Queſtion now before you is, whether Judgment being given in the Court of Queen's-Bench, a Writ of Error does not lie in the Houſe of Lords, to reverſe that Judgment? I cannot, by any means, agree that to be the Queſtion.

'But that which I take to be the proper Queſtion before you is, whether or no it be the ſole Right of the Commons of England to determine their own Elections? If you are of that Opinion, never let your Diſeaſe grow to ſuch a Head, as to put you upon the neceſſity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

'It may perhaps ſound harſh, that a Man ſhall not be admitted to make uſe, and have the Benefit of the Law; and yet when that Thought is thoroughly digeſted, I believe no Gentleman in this Houſe, but will agree, that there may be many ſuch Inſtances, where you will not endure any Suit at Law. I cannot give you any better Inſtances, than what have been mentioned to you by a learned Gentleman on the other ſide, who approves of this Proceeding by Writ of Error; the Proſecution againſt Sir William Williams for publiſhing a Libel (as it was called) by Direction of this Houſe,

House, and an Action against the Serjeant for obeying your Commands. If such an Action should be brought against the Speaker or Serjeant, should we sit still here to see what they would do in the Courts below, and afterwards wait for the Event in the House of Lords by Writ of Error? Anno 3 Ann. 1704.

'Tis very true, these Judgments that are mentioned by that Gentleman continue still unreversed. As to that given against the Speaker, he mentioned it as a Precedent not fit to be followed; indeed, 'tis a Reproach to the House to mention it, since no Parliament hath reversed it. As to the other Action against the Serjeant, he says, Judgment was given against him, and that stands in full Force; as I remember that Case, it went off upon the Form of Pleading.

'But nothing of that kind being the Question now, I beg leave to state what this Action is that is now before us; for Gentlemen in the Country, who have frequently met with Actions, prosecuted without Censure for matters relating to Elections, may, perhaps, be surprized, till they come to consider what the Point is. This is not an Action grounded upon any Statute whatsoever. 'Tis agreed an Action may be maintained where a Statute gives a particular Remedy, but this is an Action founded upon the Common-Law. Whatever your Privileges are, if you will consent to an Act of Parliament to make other Persons Judges of those Privileges, so far as you consent, if they pursue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common-Law is that which, I think, interferes with the inherent Right of this House.

'We have, I think, attained to one Piece of Knowledge upon this Debate, that this was the first Action that was ever brought of this kind; and Gentlemen will not much wonder why this is brought now, when they consider what Endeavours have been used to make this House contemptible. I believe this may be thought the most probable Method to attain that end.

'I would not repeat the Precedents that have been quoted, yet I cannot but take notice of that of Barnardiston and Soame: Those Arguments that were made use of for this Judgment, in that Case were rejected, and the Judgment of the Lords was then directly contrary. I should be very glad to hear how the Lords Judgment of Reversal in that Case, and in this, are reconcilable. The Commons, at that time, would scarce have suffered such an Attempt upon their Privileges, and I hope we shall be as careful and as zealous to preserve ours: We have as much Power as our Predecessors, we shall never suffer for want of Power, if we do not suffer for want of Will to exert it.

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'I expect to hear of the great Authority of one learned Judge, that differed from them; I have the utmoſt Eſteem for his Judgment, but I am ſorry to hear any Inſinuation, that thoſe Judges who have given their Opinion otherwiſe, are guilty of a Breach of their Oaths. It hath been touched upon, that, whenever any Queſtion has been asked the Judges, concerning the Privileges of the Lords, or the Priviſeges of the Commons, their Anſwer is recorded for the Inſtruction of all their Succeſſors, and, to the Honour of both Houſes of Parliament, that it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common-Law, and is not to be ſubject to their Judgment, 'tis *alieni fori*.

'And, Sir, as I have been informed, this was the Anſwer given in the Houſe of Lords by one of the preſent Judges, and by what I have heard, it was well he eſcaped their Cenſure; ſhewing too much Reſpect to this Houſe gave very great Offence.

'I beg Gentlemen to conſider, (I ſhall not enter into Particulars that have been mentioned) whether any thing of this kind would not make you deſpicable, to the loweſt Degree, in the World, and expoſe Electors to ſuch Miſchiefs that none could endure? Upon every Election that comes before you, 'tis impoſſible to judge the Right of Election, but by the Right of the Electors. If you will endure any Perſon, after you have ſaid he has no Right, to go into Weſtminſter-hall, and bring an Action in the Courts there, a Jury may find a Verdict, that the Houſe of Commons are miſtaken, and that this Perſon hath a Right, and Judgment ſhall be given accordingly. Will not this Proceeding, that very Moment, ſubmit your Reſolutions to the Examination and Cenſure of the inferior Courts? May not they ſay, they vote for one another, we have detected them all? That they are a Parcel of People packed together, and not one of them elected as they ſhould be?

'What Condition the Magiſtrate will be in, hath been mentioned already; when a Multitude hath a Right, and every body may bring his Action, can any Magiſtrate, (a Conſtable as in this Caſe) bear the Expences of a hundred or a thouſand Actions at Law? There will not be wanting ſome to proſecute a Magiſtrate with all the Violence poſſible.

'Tho' I can by no means agree, that this Matter is to be determined according to the common Rules and Methods of Law, but according to the Courſe of Parliament; yet I ſhall compare it with ſome other Caſes in the Law,

'That which makes theſe Perſons Hardſhips the greater, is, theſe Magiſtrates are not People that officiouſly interpoſe to take a Poll at Elections, and make a Return; but theſe

are

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are Men, who, by the Duty of their Office, are obliged to do it; and if they do not execute their Office, and give you Satisfaction, yet if you let this be examined in another Place, after you have said they have done well, they may be punished for doing so.

'I will compare this with one or two common Cases that have not been mentioned; suppose a Person should exhibit an Indictment against another maliciously: he does this wilfully, and an Action does lie against him; but if a Grand-Juryman find a Bill against a Man, the Law will not admit an Averment that it was done maliciously, because he was obliged by his Office to do it; So it is in the Case of a Witness, because he is brought in by the Process of the Court: So it is in the Case of Judges. And is it not equally the Duty of a Magistrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

'A great deal might be said further upon this, but I hope 'tis pretty unnecessary: And that no body can have any Doubt but that our Privileges are very much concerned in this Question, and what the Consequences would be; therefore I would humbly propose for the Question what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

'We certainly have such a thing as the Law and Custom of Parliament, and that is very well known, and upon that Foot I desire you would put a Question to this effect:

'That the sole Right of examining and determining all Matters relating to the Election of Members to serve in Parliament, except in such Cases as are otherwise provided for by an Act of Parliament, is in the House of Commons; and that neither the Qualification of the Electors, or the Right of the Persons elected, is elsewhere cognizable or determinable.'

Members. The Question, the Question!

'Sir, I speak only to your Order, that Gentlemen would not interrupt one another by calling for the Question, but give diligent Attention to the Debate, for this is a Matter of great Consequence. Mr. Smith.

Then. Mr. Freeman (in the Chair) stated a Question on his Paper to the Effect proposed by Mr. Sollicitor, and read the same to the Committee.

'I am very willing to hear any Gentleman that will stand up and speak, and you have had a very good Hint given you by an honourable Person, that this is a Business of great Moment; and I hope we shall continue to do as we have done, that is, to hear Gentlemen patiently: and that we may not be guilty of any Disorder, I move you for Candles to be brought in.' Sir Christopher Musgrave.

Then

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Then the Queſtion was put, and carried for Candles. And they were brought in accordingly.

Mr. Dormer, afterwards a Judge.

'Mr. Freeman, you have now a Queſtion upon your Paper, but that which I take to be the Queſtion, is, Whether a Freeholder, or a Freeman, who hath a Right to give his Vote for his Repreſentatives in Parliament, may arbitrarily and maliciouſly be deprived of that Privilege, without any Redreſs in any Court whatſoever.

'This I take to be the Caſe before you, 'tis ſaid to be of great Conſequence, and I do take it to be of as great Conſequence as any thing that ever came before either Houſe; and I don't look upon it only to concern the Juriſdiction of the Lords and Commons, but to affect every Part of the Conſtitution, and the Queen the Head thereof, in the higheſt Degree. For it comes to this; if the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we ſhall be turned into a State of Villenage, and the People will be deprived of chuſing their own Repreſentatives without Relief, and ſhall not have Relief by her Majeſty in the Court of Queen's-Bench, nor before her in the Court of Parliament, where, in Conſideration of Law, ſhe is always preſent, and where, by our Law, is the laſt Appeal; and there will be a Failure and an Interruption of Juſtice, and our Conſtitution, in relation to ourſelves, will be ſo far changed, that 'twill be impoſſible there ſhould be any right Repreſentatives of the People: For, 'twill not be the People then that will chuſe, but the Officer may arbitrarily refuſe and return whom he thinks fit, and the particular Perſon will be without Remedy. For, whatever Gentlemen apprehend, if the Right of Return be not controverted, which way can any particular Man bring his Caſe before you? And what Remedy ſhall he have, if not by Action? I will not ſay there has not, (but I will turn the Argument, and put it upon them to ſhew there has;) but I believe there never was any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the preſent Caſe: And this Matter is found by a Jury that was ſtruck, and not one Man of the Jury but of Quality, and approved on both ſides: And I think, tho' it never came before the Parliament, nor the Committee of Privileges, they might conſider of a particular Injury.

'And as for the notion that hath been taken up, that where the Houſe of Commons have a Juriſdiction, there the Party is in all Caſes without Remedy in any other Court; ſure that is not according to Truth: for in the Caſe of a falſe Return, there is a public Injury, that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no Action

Action lies, there can be no Sasisfaction; for this Houſe hath not awarded Damages in any Caſe, notwithſtanding the Caſe cited; for that was only Coſts for the Man's Trouble in coming up to be examined before this Houſe. And, if they ſhould award Damages, there is no way of levying thoſe Damages; What Writ can we iſſue out? And if this Perſon be without Remedy at Law, he muſt ſit down without any Redreſs whatſoever. Anno 3 Ann. 1704.

'There may be a Multitude of Caſes, where this Houſe hath a Juriſdiction as far as concerns the Public and themſelves, and the Party ſhall have his Action alſo.

'If I receive a Blow in this Houſe, 'tis a Violation of the Privilege of this Houſe, and this Houſe can take Juriſdiction of it, and cenſure the Perſon that hath done the Injury; but will any Man ſay, that an Action of Battery will not lie at the Common-Law in that Caſe?

'There was the Caſe of Sir Thomas Clarges: At the time of his Election there was one Roe ſpoke Words to his prejudice: He might certainly have complained to this Houſe of it; (you had an Inſtance, I think, laſt Seſſion, of one that complained, for ſome ſuch Injury, againſt the Lord Biſhop of Worceſter, and the Houſe took it into Conſideration; which Sir Thomas Clarges might have done,) but he brought his Action, and recovered conſiderable Damages; and afterwards a Writ of Error was brought in the King's-Bench, and Judgment was affirmed.

'There is a Caſe not within any Proviſion of your Law, and that is, where a Sheriff made a Return, and he delivered this to a private Meſſenger to bring up to the Crown-Office. The Meſſenger by the Way thought fit to vitiate the Return, and make another Return than what he received from the Sheriff: For this an Action was brought, and he recovered at Law againſt this Meſſenger, for the private Damage he had done him. Certainly otherwiſe the Law would be defective.

'In another Caſe, the Sheriff adjourned, in prejudice to a Candidate, to a Corn-Field; an Action was brought againſt this Sheriff, at Law, for the Damages he had done this Gentleman, and it was maintained; and I dare ſay more Caſes may be put: Which ſhews that your having a Juriſdiction as to what concerns the Public, does not exclude the Party, but he may have an Action for his private Injury.

'A great many Poſitions I have heard, which I take not to be true, particularly this, 'That there is no Remedy at Law, 'but in Caſes provided for by the Statutes:' That is not ſo; theſe Statutes imply the contrary. The firſt ſays, Whereas there was not a ſufficient Remedy, therefore that gives a more

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more compleat Remedy, and ſo the Judges declared in the Caſe of Barnardiſton and Soame.

'Sir, they have told us of the Caſes of Barnardiſton and Soame, and of Nevill and Strode; with humble Submiſſion to you, thoſe Caſes go ſo far as to prove the Juriſdiction of the Lords, and the inferior Courts: That of Barnardiſton and Soame, was an Action tried before the Court of King's-Bench, and a Set of as learned Judges as ever were before, or ſince; and three of them were of Opinion for the Action, and my Lord Chief-Juſtice Hale was one of them; who, the Term before he ſurrendred his Character, did thus expreſs himſelf: 'He gave thanks to God, that he had ſpared him 'to that time, that he was able to keep his Cuſhion, and de-'clare his Conſcience in that Place.' But afterwards it had its Fate; a Writ of Error was brought in the Exchequer-Chamber; Mr. Juſtice Levinz, that reports it, ſays it appears, that thoſe who argued againſt the Judgment in the King's-Bench were made Judges, and they themſelves afterwards determined the Caſe. And every body knows how valuable it was at that time, to know the Price of an Houſe of Commons, and an Engliſh Parliament. Three Judges were made then in the Exchequer, and I think two in the Common-Pleas. Afterwards it came into the Houſe of Lords, and there the Reverſal in the Exchequer was affirmed, for Reaſons different from what are argued now, and I believe for ſeveral good Reaſons. The Sheriff in that Caſe had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a ſpecial Verdict; and therefore the ſaying, *falſo & malitioſe*, being put to a thing that was in itſelf right, would not alter the nature of the thing. Another Reaſon they went upon was, they ſaid this double Return was a void Return, and for that Reaſon the Action did not lie; and upon theſe Reaſons depended that Judgment. That Gentleman who ſaid that only four or five Lords diſſented, is under a great miſtake; four or five Lords only, I believe, entered their diſſent, but there was a great number, and near an equality againſt that Judgment; and divers Lords, now in that Houſe, were againſt that Judgment, that did not enter their diſſent.

'Then, Sir, there is the Caſe of Nevill and Strode, and that was firſt a Judgment in the Common-Pleas, and when it had taken its Progreſs in Weſtminſter-Hall, it came before the Houſe of Lords; and the Lords returned it back again to Weſtminſter-Hall, and ordered all the Judges of England to deliver their Opinion in it. That was founded upon an Ordinance of thoſe Times; Berkſhire was to ſend five Knights, and Nevill was one of them that were elected, but not returned: There they ſaid, in that Caſe that Ordinance was entirely

tirely new, and that Caſe did not recommend itſelf by the known Laws of the Land, and for that Reaſon they would not give Judgment, for Wages could not be levied for five ſuch Knights. And, when afterwards they were to give Judgment, the right Conſtitution had recovered itſelf. Anno 3 Ann. 1704.

'Now, as to the Lords Right to receive a Writ of Error in this Caſe: You have addreſſed to them that they would receive a Writ of Error, at a time when your Privileges were invaded. That was the Caſe of my Lord Hollis, who with others was informed againſt, 5 Car. for having ſpoke Words in this Houſe that did affect the Government: And he pleaded to the Juriſdiction of the Court, (is there any ſuch thing here? No they have ſubmitted to it;) and the Court over-ruled their Plea to the Juriſdiction, and that Judgment continued in force, (as ſome others which have been ſince do now, which it were well if they were reverſed,) 'tis this Houſe took notice of it; and in 1667, they deſired a Conference with the Houſe of Lords. The Chair-Man was my Lord Chief-Juſtice Vaughan, and this Houſe there complained how they were grieved by that Judgment; and, after repeated Conferences, both Houſes did conſent to this Expedient, that my Lord Hollis being the only Survivor, ſhould be deſired to bring a Writ of Error in the Houſe of Lords, and he did ſo, and the Lords in that Caſe did you Juſtice, and reverſed the Judgment.

'As to your paſſing this Vote, what it will ſignify, I cannot tell. What ſignified a Vote you paſſed before about the Year eighty, that the putting the Laws in execution againſt Proteſtant Diſſenters, was an Injury to the Public, and a Subverſion of the Government; and that thoſe that put them in execution, ſhould be looked upon as Enemies to the King and Kingdom? The Conſequance was, that all the Laws againſt Popery were put in execution againſt Proteſtants more than they were before. The Judges in Weſtminſter-Hall ſaid, this Vote had not paſſed into a Law, and they could not take notice of it. I hope we ſhall do nothing that will leſſen ourſelves, nor any thing but what will be effectual for the Ends for which 'tis propoſed.

'Mr. Freeman, I conſider you have been a long time in this Debate, and a great deal of it has been ſpent, either in ſuggeſtions contrary to what appears before you, or elſe in queſtions altogether improper for the Conſideration of the Committee; and therefore it is neceſſary to look back to that which gave Occaſion to the preſent Diſpute. Sir Joſeph Jekyll, (afterwards Maſter of the Rolls.)

'The Committee hath a Copy of the Proceedings of this Action referred to them, but it hath not been read; and I am confident if it had, and had been attended to by Gentlemen, they would ſcarce have ſaid that the Lords, in the Judgment they

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gave, did any thing in oppoſition to your Judgment, or in derogation to your Privileges.

'Before the Action was brought, there was a Reſolution of the Houſe of Commons, That the Right of Election for the Borough of Ailesbury, was in the Inhabitants not receiving Alms. 'Tis from that Reſolution the Plaintiff hath taken his Riſe, and hath brought his Action; for by his Declaration he makes his Caſe to be, that he was an Inhabitant of that Borough, not receiving Alms; and that the Conſtables, falſly and maliciouſly, obſtructed and hindred him from giving his Vote at the Election there. The Conſtables plead, Not guilty, and the matter goes to a Jury, and they find for the Plaintiff, and give him five Pounds Damages: Which is in effect a finding that the Plaintiff was an Inhabitant, not receiving Alms, and that he was obſtructed and hindred from voting by thoſe Conſtables, and that it was done *falsè & malitiosè*, and to his Damage. And this may ſerve to demonſtrate, that the proceeding at Law has not been in oppoſition, but in conformity to your Judgment.

'Now let us conſider, whether the bringing of this Action is a Violation of your Privileges: A great many things have been ſaid not proper for you to deliberate upon; one, that this will encourage a multitude of Suits; another, that this Action was never brought before, and ſeveral other matters which go to the queſtion, whether the Action will lie. Now that is not the queſtion here; but the true and only queſtion before you, is, whether this Action was brought in Violation of your Privileges; for, if there be no Breach of Privilege in it, I know of no Authority we have to ſtop the Courſe of legal Proceedings. And as to that, but one thing (as I conceive) has been ſaid materially, which is this, that this is a parliamentary Caſe, and appertains to your Juriſdiction; and the Judges of the Common-Law, are not Judges of the Law of Parliament, and therefore they ought not to have given the Plaintiff his Judgment, (and it muſt be admitted the Lords ought not to have given any Judgment, but what the Judges ought to have given.) To maintain this, it hath been ſaid, and undoubtedly it is true, that this Houſe hath a Right to judge Elections; and it is as true, that in order to come to that Determination, it is incidently neceſſary that the Houſe do judge of the Right of Electors; and it has been ſaid, (but that I deny) that the Right of the Electors is by the Law of Parliament.

'I take the Right of every Elector in England to accrue to him by the Common-Law, for he is under one or other of theſe Qualifications: Either he is a Freeholder, and then he has a Right to vote for Knights of the Shire; or he has a Right by Charter, or a Right by Preſcription; which two laſt

laſt Rights take in the Right of voting in all Cities and Boroughs. Now I would be glad to know whether the Right of a Freeholder is not by the Common-Law? Is it not an Eſtate, with all its Privileges and Services, created by that Law? Whether a Right by Charter is not by the Common-Law? Is it not that Law that enables the Crown to grant Charters, and qualifies that Power? Whether a Right by Preſcription is not by the Common-Law? Is not Preſcription, Common-Uſage? And is the Common-Law, any thing but Common-Uſage? So that the Right of every Elector being by the Common-Law, the Judgment of that Right is primarily and originally in the Courts of Law. The Freeholders Right of voting, is of the Eſſence of his Freehold; and you may as well take away his Freehold, as take away his Right to vote, which he has by virtue of that Freehold, and then tell him he muſt come to the Houſe of Commons to recover it. And the ſame may be ſaid of thoſe ſeveral Intereſts, which give a Right of voting in Cities and Boroughs. And thus, I hope, I have made it out, that a Right of voting is not a Parliamentary Right, but an ordinary, legal one, and by the Common-Law. Judges have the Judgment of it originally; and it is incidently only that the Houſe has a power of judging of it, and that too according to the Rules of the Common-Law; which is a further Demonſtration, that it is a Common-Law Right; for it would be abſurd to ſay, a Man has a Right by one Law, which is to be judged by the Rules of another.

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'Then what Courſe has the Plaintiff taken? He has a Right by the Common-Law to chuſe Burgeſſes for Ailesbury: That Right has been invaded, and he has gone to the Common-Law for Redreſs, and from no other Power could he have it; for this Houſe, or the Committee of Elections, cannot give a Remedy in this Caſe, that is, cannot make the Perſon injured Reparation for the Damages done him, by obſtructing him in the Exerciſe of his Privilege: And that is the thing the learned Gentlemen, who have ſpoke in this Debate, have paſſed by: And theſe are the material Points: That this is a Right at Common-Law, and this Houſe cannot apply a Remedy.

'But it has been ſaid, that the Houſe will examine, not only on behalf of the elected Perſon, but of the Electors. 'Tis true, but in order to what? To ſee whether you have a right Member here, and for no other end; for I challenge any Gentleman, to ſhew me one Inſtance of a ſingle Man who came hither and complained, that he had a Right to vote, and was hindred from voting, and made that ſolely to be the Offence of the Officer. Did the Houſe, or would the Houſe receive ſuch a Complaint? And yet he may go with

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that Complaint to the Law: For whether the Perſon he would vote for be returned or not, the Injury is the hindering him from enjoying his Privilege: And it cannot be made an Injury or not an Injury, by matter *ex poſt facto*; that is, by the Officer's returning, or not returning the Candidates. And tho' the Officer ſhould repent him, and not carry his Injuſtice ſo far as to make a falſe Return, yet it is of Uſe, that the Law will redreſs the Wrong done to the Voter, and thereby, perhaps, ſtop the firſt ſteps or approaches towards a falſe Return.

'But if I ſhould admit the Houſe would receive the ſingle Petition of a Voter, who was refuſed, and when the Perſon he would have voted for was returned, yet the Houſe cannot make him Reparation; all we can do, is to cenſure the Officer, but we cannot make the Perſon complaining whole, in point of Damages. Indeed it has been ſaid, the Houſe can give Damages, and there was an Inſtance given of Mr. Tankred, who complained againſt a Clergyman, and the Houſe ordered Mr. Tankred to pay him Coſts: So was Sir George Meggot ordered to pay Coſts to the Member he cauſeleſly petitioned againſt, * and the like is provided for at

* *The Caſe of Sir George Meggot, 23 Nov. 8 Willielmi R.*

A Complaint being made to the Houſe, that Sir George Meggot had proſecuted at Law ſeveral Perſons, for what they had teſtified the laſt Seſſion at the Committee of Privileges and Elections, upon hearing the matter touching the Election for the Borough of Southwark; it was referred to the Committee of Privileges to examine the matter of the ſaid Complaint, and report their Opinion.

4 *Decemb. 8 Willielmi. A Report was made of the matter of Fact, and that the Committee had come to this Reſolution: That Sir George Meggot having proſecuted, at Law, Thomas Malyn, and John Ladd, for what they teſtified at the Committee of Privileges and Elections the laſt Seſſion, upon heariug of the matter touching the Election for the Borough of Southwark, was guilty of a Breach of Privilege.*

The Houſe then agreed with the Committee, and ordered Sir George Meggot to be taken into Cuſtody of the Serjeant at Arms.

The Caſe of Mr. Tankred, 20 Jan. 9 Willielmi R.

Mr. Tankred complained to the Houſe of a Breach of Privilege againſt Mr. Edward Morris, Miniſter of Aldborough, in the County of York; for that the ſaid Morris had intercepted Letters of Mr. Tankred's which were ſent by the Poſt.

14 *Feb. 10 Willielmi R. Mr. Morris attending, was brought in, and the Houſe having heard him, and his Witneſs, reſolved, that there was no ground of Complaint of Breach of Privilege, and ordered that Mr. Morris ſhould be diſcharged from any further Attendance, and that he ſhould be paid the Charge of his Attendance by Mr. Tankred.*

at the beginning of every Seſſion. But are theſe Inſtances of any Petitioner repaired in Damages by this Houſe? No, theſe are Inſtances againſt Petitioners, not in Favour of them; nor are Damages given in thoſe Caſes, but Coſts; all that is provided for, is, that Perſons, frivolouſly complained againſt, ſhall not be out of Pocket. And by a mean you have a Juriſdiction in point of Expences, but not in point of Damages; for you may order the Wrong-doer into Cuſtody, and make his Payment of Coſts to the injured Perſon the price of his Liberty; but there is no direct Remedy, even for Coſts. Anno 3 Ann. 1704.

'But it is apprehended, here may be a claſhing of Juriſdictions, and if the Party ſhould be allowed to go to Law, the Courts of Law may be of one Opinion, and this Houſe of another. This is a Suppoſition the Law does not allow of, for this is to ſuppoſe Courts of Juſtice will not do right. It will be allowed to me that your Determination will always be juſt, and other Courts the Law ſuppoſes will do right too, and then they will determine as you; and your Determination, and that of the Law, as I ſaid before, has been the ſame in this Caſe. But then, as the Suppoſition of Law is, that all Courts will do right, ſo human Frailty ſuppoſes there may be, an Error in Judgment: And yet Courts muſt have Juriſdiction, or elſe there can be no Adminiſtration of Juſtice among Men, ſince there is no Judicature ſhort of another World, that can pretend to an unerring Judgment. And now I will ſhew you the ſeveral Courts have different Juriſdiction of the ſame Fact, and the Law allows them, notwithſtanding there may be diverſity of Judgments. The Court of Common-Pleas may puniſh a Perſon for aſſaulting an Officer in the Execution of their Proceſs, as a Contempt to that Court; but at the ſame time, for the ſame matter, the Offender may be puniſhed in the King's-Bench, as it is a Breach of the public Peace; and the Officer may, if he pleaſes, bring his Action in the Court of Exchequer for the Damage done him.

'I would obſerve a little upon the Caſes cited, and that as ſhort as poſſible; The firſt is that of Nevill and Strode: I have looked into the Journal of 1659, and the only Book of our Law, where that Caſe is reported, and that is Syderfin's ſecond Reports; and that was upon Writs iſſued out by Cromwell, whereby he appointed Counties to chuſe differently, ſome three, ſome four, ſome five Members. Mr. Nevill who was a Member of the long Parliament, ſtood for one of the five Knights for the County of Berks; they choſe him, but he was not returned, and therefore he brought his Action in the Common-Pleas: That Action depended there ſome time, and thereupon the Juſtices brought the Record into this Houſe for difficulty, and deſired the Houſe would

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would come to a Determination in it, (and by the way, there was no Houſe of Lords in being at that time; for it was in the time of the long Parliament, who had uſurped the whole legiſlative, as well as the executive Power:) and no wonder the Judges complimented them with the Determination of that Queſtion, ſince they were their Creatures, and had their Commiſſions from them. Well, but the Record being brought in, the Houſe appointed a day to conſider of the matter, and when they ſaw the Plaintiff had proceeded according to the known Methods of Law, they gave no Judgment in it, but ſent it back to Weſtminſter-Hall, and there it was again argued, but never adjudged. And that there was no Judgment given, is eaſy to account for, if the Judges thought ſuch an Action would lie; for at that time, the long Parliament was upon the point of bringing in the King, and reſtoring the Laws: And if they had given Judgment for the Plaintiff, they had given a Sanction to the higheſt Uſurpation of the Protector, and all his wild Fancies of changing the Conſtitution at his Will and Pleaſure. And indeed the Plaintiff had diſaffirmed the Authority of the long Parliament, which he had with great Zeal aſſerted, and of which he was himſelf a Member. But if the Judges had thought ſuch an Action would not lie, they might, without any Scruple, have given Judgment for the Defendant. And this ſeems to me a ſtrong Authority that Weſtminſter-Hall thought ſuch an Action would lie: And it is very remarkable, that when that Houſe of Commons (as they called themſelves) had uſurped the exorbitant Power I mentioned before, they did not proceed to aſſume the Juriſdiction of the Common-Law.

'The next Caſe is that of Soame and Barnardiſton, in which Weſtminſter-Hall was divided: My Lord Hale was of one Opinion, and my Lord North of another, and there were ſix and ſix of a ſide, and the matter came by Writ of Error into the Houſe of Lords, and a Gentleman ſaid, 800l. was worth contending for. But I am apt to think Sir Samuel Barnardiſton did not hope to recover one Farthing of the Money, for Soame was dead, and I believe without Aſſets: For, in all the Proceedings in the Houſe of Lords, none appeared on the behalf of his Widow, ſhe had no Council there: But it was argued againſt Sir Samuel Barnardiſton, by Mr. Mountague, the late Lord Chief-Baron, to vindicate the Proceedings of the Exchequer-Chamber, and Judgment was given, as hath been ſaid, in the Houſe of Lords.

'But what happened next? The Commons were ſo uneaſy under that Judgment, and the Injury which might be done to the People, from whom they derived their Authority, by double or falſe Returns, that the next thing was the Interpoſition

position of the Legiſlature to apply a Remedy, and the Lords came into it, though it was a great diſcredit to the Reverſal of that Judgment; for the Act of the 7th of the late King, declares falſe Returns to be againſt Law, and provides an Action ſhall lie where an Officer makes a Return falſly and maliciouſly; they never thought it an enſnaring thing, but knew Malice might be tried in that as well as many other Caſes: And I wonder to hear *falsò & malitiosè* ſhould be ſo much words of courſe. Men are tried for their Lives every day, where Malice is the main point in Iſſue. If a Man does without any Provocation kill another, the Law intends Malice, and that is Murder: So here, if an Officer refuſeth the Vote of one, who hath a clear and indiſputable Right, the Law preſumes it done maliciouſly; but if the Officer refuſes a Man's Vote, and there is any probable Cauſe, or Colour to do it, or his Right of voting is doubtful, the Judge will tell the Jury they ought to find for the Defendant; and therefore it is only in a plain and glaring Caſe, that a Man can prevail in ſuch an Action; and this by the way, is an Anſwer to that Objection, that ſuch Actions as theſe will bring all your Elections to be determined by the Lords; ſince an Officer can never be found guilty by a Jury upon this Action, where there is a Controverſy or Diſpute, much leſs can the Lords try or determine any thing of the Right. Anno 3 Ann. 1704.

'There is another Caſe, and that is the Caſe of Mr. Onſlow againſt the Bailiff of Haſlemere; that Judgment was againſt the Action; and was given by my Lord Chief-Juſtice North, and the reſt of the Judges of the Common-Pleas, upon the Authority of the Judgment in the Caſe of Soame and Barnardiſton, in the Exchequer-Chamber: and no wonder; they would not give a Judgment contrary to what ſome of themſelves had given in another Place.

'Sir, this Queſtion hath been before this Houſe not long ſince, Whether a Candidate ſhould be hindered from proceeding upon an Action at Law, before he had come to this Houſe for their Determination, whether he was choſen or no? And this Houſe, upon a ſolemn Debate, adjudged that he might go to Law before he had come hither; and I deſire your Clerk may read a word or two in your Journal, 'tis Monday 13 March 98.

Clerk reads. '[The Houſe being acquainted, that John Buller Eſq; who was Candidate at the Election for choice of Members to ſerve in this preſent Parliament, for the Borough of Leſcard, in the County Cornwall, hath brought an Action upon the Statute made in the 7th Year of his Majeſty's Reign, againſt Mr. Richard Roberts, Mayor of the ſaid Borough, for the Sum of 500l. for making a falſe Return of William Bridges Eſq; although the ſaid Mr. Buller never

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never petitioned againſt, or queſtioned the ſaid Return in this Houſe, and a Debate ariſing thereupon, reſolved that the Debate be adjourned 'till Wedneſday morning next.']

Sir Joſeph Jekyll.

'Now I deſire you to look upon Wedneſday the 15th day of March, when that Debate was reſumed.

Clerk reads. '[This was the 15th of March. The Houſe reſumed the adjourned Debate relating to Mr. Buller; and after a long Debate, the ſame fell, without any thing done thereupon.']

Members. Well, what then?

Sir Joſeph Jekyll.

'I take this to be a plain Authority, that will govern the Caſe before you: For if it was not reaſonable to reſtrain a Man, from proceeding at Law upon the Statute, before he had come hither for a Determination, when it was to controvert the very Election, which was undoubtedly proper for the Judicature of the Houſe; much leſs will it be reaſonable to reſtrain a Proceeding at Law, which is not to controvert the Election, and upon a Caſe not proper for the Judicature of the Houſe; and the Houſe doing nothing upon that Complaint, is a Declaration, that the Houſe could not juſtly do any thing upon it. For if a Man makes a Motion in any other Court, and the Court declares they will do nothing upon it, I deſire to know whether that be not a Declaration of that Court, that the Motion is unreaſonable, and it is all the Judgment the Court gives in ſuch a Caſe. And I had the Honour to ſit in Parliament when that Motion was made, and very much preſſed; and ſome that have ſpoke in this Debate, were then of an Opinion contrary to what they are now, and were not for ſtopping the Courſe of Law.

'Sir, I apprehend the Action is well founded in this Caſe; this Man had a Right to vote, he had an Injury done him in reſpect to that Right, he hath ſought to be repaired in a proper way, and he could not be repaired in any other: I am for doing nothing to his Prejudice, and therefore am againſt your queſtion.'

Mr. Harley, (Speaker.)

'Sir, I ſhall trouble you but with a few words after this long Debate: And rather to underſtand the Terms you are debating on, than to think any thing I can offer to be of any great Weight. But I take the queſtion not to be as ſome have repreſented it, but to be ſingly this in general, whether an Action does lie at Common-Law in the Caſe before you?

'There is no need to mention the particular Circumſtances of Ailesbury Election; for if that was the ſingle Caſe, you might have taken another Method. I will not inſiſt, that in this very Election, a great number of thoſe Inhabitants petitioned this Houſe upon this point, that their Votes were denied: And after this Petition had lain in the Houſe

ſome

ſome time, it was withdrawn by their own conſent; I do not trouble myſelf whether this particular Man was amongſt them, nor will I trouble you with what may reaſonably be urged from this; but leave that to other Gentlemen. Anno 3 Ann. 1704.

'But I deſire we may underſtand the terms upon which we are debating; we have had Maxims of the Common-Law, and the Rights of Parliament mentioned. The Common-Law is the Common-Uſage of the Realm; I take the Laws of Parliament to be the Common-Law of the Land, and the Uſage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Uſage, as the Common-Law is.

'Then how ſhall we know whether this belongs to the Common Law? If there be any other way, I ſhould be glad to be informed; but I think there is no other way of knowing, whether an Action will lie at Common-Law, but by Reaſon or Uſage, and Precedents. Now, if by Reaſon; it is to be made out by what neceſſarily attends this Caſe, or ſome other Caſes like it. And pray what do they offer, that it lies at Common-Law? Do they give you any Precedent? What Reaſon do they offer? I ſuppoſe that which was read laſt is no Precedent in this Caſe; for that was an Action upon the Statute; or that the Courts below take upon them a Legiſlature inſtead of a Judicature, which muſt be, if there be no Rule for them to go by. I take the queſtion you have read, to conſiſt of two parts; one aſſerting your own Right, the other is Negative, that no other Courts have any Right, but in Caſes particularly directed by the Statute.

'I cannot think this of Electors and Elected a Privilege, I take it to be a Service both in the Electors and Elected; and formerly it was reckoned a hard Service; I know not how they find it now. 'Tis a Service, I take it, becauſe all who are Electors are liable to pay the Wages, and I like that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected when one paid Fifteenths, the other paid Tenths; ſo that I take it to be a Service: And if a Franchiſe, ſee the Conſequence; it will be in the power of the Crown to create as many Boroughs as they pleaſe.

'Then conſider, this Houſe is in poſſeſſion of this Power, and of Right, and I do not find the Common-Law in poſſeſſion of any ſuch Right. Then what do they offer to bring it in, but that there would be ſome failure of Juſtice? Now I look it, that the Judges are *jus dicere*, and not *jus dare*: If any thing want a Proviſion to be made for it, it muſt be done by the legiſlative Power; and if the Electors want it, Proviſion muſt be made for them, that they ſhall have an Action. And thoſe Gentlemen, who think that neceſſary, may bring

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in a Bill to that purpoſe, and take the Senſe of the Legiſlature upon it in a regular Way.

'The Queſtion before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where ſome Statutes have not particularly directed otherwiſe, do not belong to this Houſe? There was a famous Caſe of Goodwin, that was conteſted by the Crown, and the Crown pretended to ſend out another Writ. And there they ſay, that as to Members of Parliament, their Attendance, *&c.* they are the ſole Judge: And this they laid before King James in the firſt Year of his Reign, and claim it as their ſole Right, and the King's ſecond Writ was determined to be void.

'But a Gentleman makes an Argument, if one ſhould ſtrike another in the Houſe, what Remedy? Why there is an Act made for that Caſe in Henry the VIth's time.

'I think now the Matter will turn upon this: Say they, 'tis true you can try Elections, and who are the Electors; but here is one thing remains, that is, to give Satisfaction. Have they any Precedents for this? I believe the Precedents are without; they have a Power for what is neceſſary; nothing leſs than a Law can give the other.

'Gentlemen ſay, there may be a Difference in Judgment in Courts below, but they are ſubordinate, and there lies an Appeal: But in this Caſe, all Courts will be co-ordinate with you; and therefore if that be a Grievance, nay a Soleciſm in Government, prevent it now.

'Tis ſaid, what will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote muſt be the Ground of it.

'You are Judges of the Whole; but ſay ſome, you cannot give the pecuniary Satisfaction. Well, ſuppoſe ſo; but you can reſtore all to their Right. But let me ſay this, if you would not ſet up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at laſt, I hope it will be a Warning to you, to take more care in the Judging of your Elections for the time to come.

'If the Judgment belongs to you, and you are poſſeſſed of it for ſo long a Tract of Time, that no body can offer anything againſt it ſince Hen. IV's time; till Gentlemen ſhew me ſome Reaſon, why the Common-Law ſhould lay hold of it, I muſt be of Opinion, that it does belong to you, and no Court can take cognizance of it but you, except where it is otherwiſe provided for by Statute.'

Sir Thomas Meres.

'Sir, I ſhall not enter into a Diſcourſe, and repeat what I remember of former times: I will ſay but this, let others anſwer it better if they can. As to the Words *falsò & malitiosè*, it ſeems one Chief-Juſtice ſaid, they were Words of Impor-

Importance, and muſt be proved; another Chief-Juſtice ſaid, they were only Words of courſe, that is, like Pepper and Vinegar to a Slice of Roaſt-Beef: So there is one Chief-Juſtice, that ſpoke laſt but one, againſt another. Anno 3 Ann. 1704.

'As to making Satisfaction, I confeſs, I like very well what that Gentleman ſaid on the right-hand, if there was any Precedent for it, I agree it would do very well, that this Houſe could give Damages, and we will make the beſt of it; but moſt of theſe things have ſpite in them, and theſe Actions are brought with ſpite. Now this we can do, we can puniſh the Officer, and there is Revenge in that; and that is a ſweet Bit, and ſome Satisfaction. What further occurs to me, hath been ſpoken by other Gentlemen, better than I can do it; and I ſhall not repeat, it being ſo late in the Night.'

Mr. Cowper, (afterwards Earl Cowper.)

'I perfectly agree with that honourable and learned Gentleman that ſpoke laſt but one in this Debate, in what he laid down as an undoubted Maxim or Ground-work for the Opinion he delivered, that the Law and Cuſtom of Parliament is Part of the Law of the Land, and as ſuch ought to be taken notice of by all Perſons. And I think 'tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle is this, That we ought not, out of Zeal to our own Juriſdiction, to go one Step farther than that known Law and Cuſtom of Parliament will warrant us to do.

'Now I take it upon this Debate, that this Law and Cuſtom of Parliament doth not give the Subject, who is injured by his Vote being denied him, any Satisfaction, or Recompence for that Damage: And am the rather confirmed in that Opinion, becauſe that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleaſed to repreſent to you any one Precedent, where the Subject ſo injured hath complained to the Parliament, and had Redreſs in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return. So that it cannot be ſhewed, that it hath been the Law and Cuſtom of Parliament to give that Remedy, or Relief in Parliament, which is the Subject-Matter, or End of the Action now in Queſtion.

'I go likewiſe along with him, and every Gentleman that has ſpoke in this Debate, that by the Law and Cuſtom of Parliament, none but yourſelves can determine who are right-elected, in order to diſplace, or place them here; and, incident to that End, you have the ſole Right of conſidering the Right of the Electors: I ſay ſo far forth, as it is neceſſarily incident to determine who ſhall, and who ſhall not be here; and no other Court can conſider the Right of the

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Electors, in order to determine the Right of any to ſit in this Place, further than you, by ſome Act of Parliament, have given them leave. But this Matter having now been diſputed a great while, you have had it fully repreſented to you, how they came to hold the Scales in this Action in Weſtminſter-hall, not as in a Caſe where the Right of Election, or the Privileges of this Houſe was the Subject-Matter of the Queſtion: the Action was brought there only to entitle the injured Subject to Damages. And this Matter ought to be conſidered, as it relates to different Ends and Purpoſes, and upon that it turned in the Caſe of Soame and Barnardiſton. They who thought that Action lay, thought Courts below might try the Merits of an Election to repair Damages, not to determine who ſhould be admitted to ſit in Parliament.

'And I will venture to ſay, that the Judgment of the Houſe of Lords that confirmed that Reverſal, was in no wiſe, at that time, ſatisfactory to the Commons of England.

'But the Act of Parliament that hath been mentioned, was built upon this, that the Reverſal of the Judgment between Barnardiſton and Soame was not Right, and ſo that Act was procured to ſet up the Right of the Commons of England, that was thought to be invaded by that Reverſal, or Judgment, that the Action upon the Caſe did not lie.

'I will go a Step farther, that as you have the ſole Power to try the Right of Election, and conſider the Right of the Electors, to the End I mentioned, to determine who ſhall be admitted here; ſo I grant it hath been the Law and Cuſtom of Parliaments, (how ancient I will not enquire) to puniſh the Offenders, particularly the Officer and Magiſtrate preſiding at the Election, for doing any Wrong, or Injury in his Office on that Occaſion, in order to make him an Example; or as an Offender againſt the Public, and the Conſtitution of Parliament: So far I grant you have juſt Right to go, and no body ought to interfere with you.

'But now we are carrying the Matter yet further: The Queſtion now is not, Whether we have the ſole Right to puniſh the Officer as a public Offender; this Action is not brought to that end, nor is there a Word in the Declaration who was, or who was not duly elected, or that the Conſtitution or Privilege of Parliament was violated. But the Plaintiff only ſays he had a Right to vote, and that he was injuriouſly denied it (whether the right or wrong Member was returned, he meddles not with it) and he ſubmits it to the Court and to the Law, Whether he ought not to have Damages for that Wrong? And the Queſtion now is, Whether that Demand of Damages was not well founded? Or whether there is any thing in this, contrary to the Law and Con-

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Conſtitution of Parliament? Law depending on Cuſtom, certainly conſiſts not in, and is not to be made out by one Act, but by often re-iterated Acts: And that muſt be very far from the Law and Cuſtom of Parliament, which is ſo far from being a frequent Repetition of Acts, or Precedents, that in this Caſe, there is not one Inſtance, where an Elector hath brought his Petition, without regard to the Return made, and deſired his particular Right to vote might be tried and aſſerted, he having been obſtructed and injured in giving his Vote: Nor was ever ſuch Elector repaired in Damages here, nor ever had his particular Right to vote reſolved, or aſſerted by any Judgment, or Declaration of this Houſe.

'The learned and honourable Perſon, upon whoſe Reaſoning I am humbly offering my Thoughts, with great Deference, was pleaſed to inſtance in the Caſe of five Perſons, in the Town of Aylesbury, who exhibited a Petition, and complained of an Injury done them at an Election for that Town, at which their Votes were refuſed. And if they complained of nothing further, and did not conclude to the Right of the Return, and complain, that they were unduly repreſented, I admit it had been ſo far an Inſtance to his Purpoſe. But if they had ſo complained only of the Injury done the Petitioners in denying their Votes; yet he is pleaſed to tell you, this Petition was withdrawn, and by the Conſent of the Perſons who preſented it, and ſo came to nothing. I ſuppoſe this is the ſingle Precedent to prove the Law and Cuſtom of Parliament, becauſe there is no other Inſtance given. It does not appear upon what Ground or Reaſons it was withdrawn; and I having no particular Memory of that Paſſage; you will pardon me, if I am miſtaken in my Conjecture. I believe no Man, that ſeeks a Remedy, would deſiſt, if he expected to ſucceed; ſo I take the moſt probable Reaſon (till another appear) to be, that they were hopeleſs of doing any good with it: And one Petition not proſecuted, will hardly ſhew, that Parliaments uſe to give Redreſs in ſuch Caſes. Now, if that Precedent had been ſucceſsful, if the Petition had been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had paſſed to aſſert the Petitioners Right, (but I did not obſerve there were any ſuch Proceedings;) then, indeed, I muſt admit, that it was one Precedent in point, and a very material one; and it would have proved, that we had once held Plea of this Matter, and by conſequence, if we had often done ſo, that no body elſe had to do with it. But if that Precedent be defective, and none can ſhew, that ever any Petition was exhibited by any Elector, for a perſonal Injury done him in rejecting his Vote, tho' the Perſon he would have voted for was returned, this Action may lie for

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ſuch an Injury done to an Elector, without interfering with any Law, or Uſage of Parliament, that hath yet been made evident; and that brings me to another Matter of that honourable Perſon's Diſcourſe, and I acknowledge he entered into it with a great deal of Candour and Fairneſs.

'He was pleaſed to ſay, he thought it was admitted in this Debate, that the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due weight, and admit what I take his Meaning to be, that this Action, in the particular Species of it, may be new, tho' it's old in its Genus, or the principal Materials on which it is built; and I take it, if by the general Rule, or Reaſon of Law for ſuch an Action, it be warranted, this Action (as a thouſand other Actions on the Caſe may) will lie, tho' in all the Parts 'tis not to be exactly parallelled; for it is the very nature of, and implied in the name of an Action upon the Caſe, that every Man may maintain it on his particular Caſe, provided it carry in it the general Reaſon, or Ingredients required by Law to ſupport ſuch an Action, tho', in many Circumſtances, it may be perfectly new. I ſee that honourable Perſon underſtands clearly the neceſſary Incidents of that Action; that is, there are to be *Damnum & Injuria*, which I take to mean a Damage to the Subject, not ariſing from a lawful, but, which is the Conſequence, of an unlawful Act. Now, ſays he, firſt here is no Damage, becauſe anciently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too, and in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Caſe is wanting. This is clear Reaſoning, and either to be anſwered or ſubmitted to.

'It is ſaid, the Right of Electing was a Service, how true, I doubt upon the Reaſon of the thing: A Service was often a Part of the Tenure, by which a Man held his Land till it came up to the Crown; and the Service was originally created by Grant and Reſervation. Now, can any one imagine, that where one holds a ſmall Freehold, any ſuch Tenure was created between him and his immediate Lord, originally by Reſervation, as that he ſhould vote to ſend Members to Parliament?

'But if it might be conſider'd as a Service ſo created, it will not do the Buſineſs of the Argument, unleſs you conſider it alſo as a Service of Burden, without Advantage or Privilege; for if it be a Privilege too, (tho' in its Creation it might be a Service) then the Depriving a Man of it is an Injury. Now no body can think but that the Right to elect a Parliament-Man, which is a diſtinguiſhing Character from the Vulgar, and hath its weight in the Legiſlature, is a Privilege; and

and therefore to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege; and I believe any Engliſhman would think we dealt hardly by him, to deprive him of it, tho' we ſhould tell him, at the ſame time, we deprived him only of a Service and Burden, and not of a valuable Privilege. Anno 3 Ann. 1704.

'There is another thing occurs on this Head: We have been ſo far from thinking the being elected, a Service or Burden only, that, in the nature of a Repeal of thoſe Judgments of Soame and Barnardiſton, by a poſitive Law, we have given the Elected double Damages if he be deprived of that Service. Therefore, by our own notion, and in our Caſe, 'tis a Privilege that ought to be recompenſed even with double Damages, that is to ſay, when it concerns ourſelves. And ſhall we declare it a mere Service in the Caſe of our Electors, not to be recompenſed even by ſingle Damages, and that after the undoubted Methods of the Common-Law have adjudged it their due; for I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the laſt Reſort? The Lords have not judged the Fact; they are bound as to the Fact by the Verdict, and they are unqueſtionably the Judges of the Law on a Writ of Error. And therefore, as to what has been ſaid, that any Fact of an Election might come to be determined before the Lords, it is a great miſtake, for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Conſtitution. Give me leave to ſay, we, upon this Occaſion, judge of this matter only as a Matter of Law, which may affect our Privileges; and, tho' we have Authority to conſider what is Law, as it relates to, or may intrench upon our Privileges, no body that ſits here can think that there lies an Appeal in this Place, or a ſecond Conſideration of this matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here, to the Judgment of the Lords, will not hold otherwiſe than as it relates to our own Privileges; for no body will ſay, that we are the dernier Reſort in any other reſpect. And tho' that is the only Point that brings it properly under our Conſideration; yet, I fear we are taking from the Subject, in effect, what the Law hath adjudged his Right, and reverſing a legal Judgment given in the Subject's favour. There are other Arguments flung in, to make up the Weight only, as that which compares the preſent to the Caſe of a Dove-Houſe; in which Caſe, in regard of the multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it. It is true, where a multitude are injured by one and the ſame Fact, it ſhall not be puniſhed by a multitude

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titude of Actions; but the Public is to take care of it, becauſe the Injury is of a public nature. But by the ſame Standard and known Laws of England, if one Man is ſo raſh as to commit a multitude of Injuries, which ſeverally affect ſeveral Perſons, it was never ſaid, that he became unpuniſhable by the multitude of his Offences, but every one injured has his Action againſt him. I have heard it ſaid, *defendit Numerus*, but that is ſpoken as to the Number of Offenders, not the Number of Offences committed by the ſame Man. And theſe Injuries which conſiſt in denying the Subject to vote, when of right he ought, will not be multiplied (as is objected) by letting the Subject know, that as they may come into Parliament to puniſh the Officer, as a public Offender againſt the Conſtitution; ſo the particular Perſon injured by being denied his Vote, may alſo have an Action for the private and particular Injury done to him only.

'I would mention one thing more: They who have ſpoke for the other Opinion, ſeem to take it for granted, (which I do not take to be a true way of reaſoning) that becauſe, in determining who have a Right to ſit here, we do incidently, and only can, in order to that end, determine who have a Right to vote; therefore no other Judicature can try the ſame Matter or Right to vote, tho' it be to different Ends and Purpoſes.

'Now if you will conſider the different Juriſdictions in the Conſtitution of this Kingdom, there is nothing more common, and many Inſtances may be given of it. There are Variety of Juriſdictions that try the ſame Fact, and yet each hath a ſole and ſeparate Juriſdiction in that Matter, to different Ends; and theſe Juriſdictions are not, in that reſpect, ſubordinate to another: take the ſpiritual and temporal; the ſpiritual is not ſubordinate, but only reſtrainable by the temporal, where they intrench upon the temporal; as in the common Inſtance of Matrimony, which, directly, and abſtracted from other Purpoſes, is triable in the Spiritual Court, and no where elſe. But, yet, if that comes to be a Queſtion of Fact in relation to a Title at Law, or to make out a Deſcent, why the Temporal Courts every day try it, tho' *per ſe*, and taken by itſelf, it belongs to the Juriſdiction of the Spiritual Court; and yet theſe Courts are not, in that reſpect, ſubordinate one to another.

'So, in the Caſe touched upon, of a Battery, 'tis not triable in the Common-Pleas, as 'tis an Offence againſt the public Peace, by Indictment, in order to a Fine, but triable in thoſe Courts only that have a criminal Juriſdiction; but as 'tis a private Injury, and in order to recompenſe the injured in Damages, that is triable in the Court of Common-Pleas, and other Places which have Cognizance of civil Actions only; and this is not in reſpect that one Court is ſubordinate to the other, but one holds Plea of the ſame Fact, in order to one End; and the other in

n order to another End; and there is no clashing of Juris- Anno 3 Ann. 1704.
dictions in such Cases.

'For what hath been objected, that this may create Variety of Judgments concerning the same Right; this does not weigh, it seems, in our own Cases; for we may bring our Actions for double Damages for a false Return, and yet that may produce the same Variety of Judgments. So was the Opinion of the House in the Case cited behind me; and the Law is plain, that tho' the last Determination of this House, where there hath been any, shall determine the Right of Election, and there the Judges and Jury shall be bound by the last Determination, and to act by the same Rule; yet, in Towns where there has been no Dispute of the Right settled here one way or other, the Candidate may, notwithstanding, bring his Action, and he, or the People of the Place, may also petition the House of Commons. And then there is the same Objection; for there may be Variety of Judgments touching the Right of Election, one in the House of Commons and another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in such Cases, where the Right had never been settled in Parliament before the Election in question, are not directed by the Judgment of your House, on the same disputed Election, nor is any Jury bound to follow such Judgment; and if you will go upon a Supposition that a Judge and Jury may go contrary to Law and Right, or the Determinations of the House, in the Case before you, 'tis an Objection which you have overlooked in your own Cases; and therefore why should it be an Objection to hinder the Person whom you represent of his Remedy for the Injury done him?

'Upon the whole, I am for so much of your Question as serves only to declare, that you have the sole Power of determining the Right of all Elections, and even the Elector's Right to vote, to the end to try who is your Member, or to punish the Officer as an Offender against the Constitution: so far is agreeable to the constant Law and Practice of Parliament. But for that part of the Question which relates to the restraining the Electors from bringing their Actions for the personal or private Damage done to them, I think it is not agreeable to the Law or Constitution of Parliament.'

'Mr. Freeman, we are much obliged to the Gentlemen that have argued on both sides, who have brought the Matter of this Debate into a narrow Compass: The Question is, whether an Elector be entitled to an Action at Common-Law against the Officer, for recovery of Damages, in case his Vote which he offered, be not taken down in writing, and entered in the Poll? or, whether the House of Commons have the sole Privilege of examining and determining the Right or Qualification of every Elector to give his Vote, and to judge of Sir Humphry Mackworth.

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the Behaviour of every Sheriff and other Officer, in taking the Poll on the Election of Members to ſerve in Parliament.

'I am of Opinion, with great Submiſſion to better Judgments, that the Houſe of Commons have a ſole Right of Judicature in theſe Caſes, and that the Elector is not entitled to an Action at Common Law. I ſhall endeavour to ſupport this Opinion by anſwering the Arguments that have been made uſe of to prove the contrary: And firſt, I crave leave to obſerve, that the Gentlemen who have argued on the other ſide, have not taken notice of a Diſtinction, which ſeems to be very material in this Caſe, and that is between an actual Force or Violence done by the Officer, and a bare Omiſſion in point of Duty. It is agreed, that, in caſe the Officer does by Force or Violence obſtruct, or hinder an Elector from offering or pronouncing his Vote at an Election, for which of the Candidates he pleaſes, the Elector will be entitled to an Action at Common Law for Recovery of Damages, for that is perſonal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But, in caſe the Officer does permit the Elector quietly to offer or pronounce his Vote, (as he did in the Caſe of Aſhby, who pronounced his Vote for Sir Thomas Lee, and Symon Mayne Eſq;) but does not think fit to enter his Vote upon the Poll, the Elector in this Caſe is not entitled to an Action at Common Law for recovery of Damages, becauſe he has neither ſuffered any Force or Violence, nor is, by ſuch Omiſſion, deprived of his Vote; for a Vote being once pronounced, the Law takes it for the Benefit of the Public, tho' the Officer be wanting in his Duty; and none have power to determine whether the Elector had a legal Vote, and whether the Officer had ſufficient Reaſon to refuſe to enter the ſaid Vote in the Poll, but the Houſe of Commons. If any other Perſons ſhould have Authority in this Caſe, they will be able to deſtroy the Freedom of Elections, and the Conſtitution of Parliament.

'It is inſiſted by ſome Gentlemen, that the Electors have no proper Remedy, in this Caſe, in the Houſe of Commons, and therefore they muſt have their Remedy at Common-Law: but, with great Deference to their Judgments, the Electors have a proper Remedy, in this Houſe, in every reſpect; for here their Votes will be allowed, the legal Repreſentatives reſtored, and the Officer will be puniſhed for any wilful Default in the Execution of his Office. This is a Remedy that anſwers the End for which every Elector is entitled to give his Vote, which is not for a private Advantage to himſelf, but for the general Advantage of the whole Kingdom. But the Action at Law is no proper Remedy in any reſpect; for ſince a Vote that is offered and refuſed, is as good by the Law of Parliament as a Vote that is offered and received, and

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is ſo adjudged on the Trial of every Election in the Houſe of Commons, or elſe they could not fill their Houſe with legal Repreſentatives; it is not proper or reaſonable that an Officer ſhould pay Damages to an Elector that has not ſuffered any, nor that a public Offence ſhould be puniſhed by a private Satisfaction; which is not likely to prevent the Evil, preſerve the Vote, and reſtore the Repreſentative; nor is the ſame conſiſtent with the Conſtitution or the public Safety. Anno 3 Ann. 1704.

The Qualification of Electors, and the Behaviour of Officers, in all Elections, are Matters of Parliament, and ſuch Matters are not cognizable elſewhere, as hath been often declared by all the Judges of England: A Parliamentary Caſe requires a Parliamentary Remedy. And ſince Votes have been refuſed in all Elections; if Electors, in this Caſe, had been entitled to an Action at Law, it muſt be preſumed, that ſome time or other ſuch an Action would have been brought, which yet was never once attempted in any former Reign; and all thoſe Acts of Parliament that were made to give Damages in Caſes relating to Elections, do demonſtrate that no ſuch Damages could be recovered at Common-Law; for if they could, there had been no Occaſion for making any of thoſe Statutes.

It is inſiſted, that every Right muſt have a Remedy, but then the Subject muſt be firſt deprived of that Right, which in this Caſe he was not; and, even when he is, he muſt have his Remedy in a proper Manner, and in a proper Court. There are ſeveral ſorts of Rights and ſeveral ſorts of Laws in England, and there are ſeveral Courts of Juſtice for the Adminiſtration of thoſe Laws: A Man that has a right to a Legacy cannot bring an Action at Common-Law, but he has a proper Remedy in the Spiritual Court. The like may be obſerved of Caſes that belong to the Courts of Chancery, Admiralty, Stanneries, and of the Foreſt-Laws. The Subject cannot bring Actions at Common-Law in Caſes that belong to the Juriſdiction of other Courts. And when my Lord-Chief-Juſtice Coke enumerates the ſeveral Laws in this Kingdom, he gives the Precedence to the Law and Cuſtom of Parliament, which he tells us is ſuperior to the Common-Law in Weſtminſter-Hall. And as every Court at Law has its Cuſtoms and Privileges peculiar to itſelf, and is ſole Judge of them, ſo alſo the High Court of Parliament, *ſuis propriis Legibus & Conſuetudinibus ſubſiſtit*, hath its own Power, Laws and Cuſtoms, and is ſole Judge thereof. And, if an Action at Common-Law will not lie for a Legacy, where the Spiritual Court has a Juriſdiction, though the Temporal Courts have, in many reſpects, a ſuperior Authority, ſuch an Action will much leſs lie in a Caſe concerning the Parliament, which is the higheſt Court of the Kingdom, and who are ſole Judges in

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all Caſes relating to themſelves. But ſome carry this further, and ſay that every Right muſt have a Remedy with Damages. This may be true in moſt Caſes, where a Man is deprived of Rights of Property and Poſſeſſion; but there are many Inſtances to be given, where a Right of Franchiſe or Privilege is not entitled to any Damage; as a Perſon elected Mayor of a Corporation, if the proper Officer refuſes to ſwear him, has no Action at Law for Damages, but his Remedy is by *Mandamus* out of the Queen's Bench; there is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you ſhall recover the Land, but no Damages: So in this Caſe, the proper Remedy is to have the Vote allowed, which can only be done by the Houſe of Commons. Some Gentlemen have found out a new Diſtinction which I never heard before, that the Houſe of Commons have the ſole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one intent, but not to another; that is, in order to determine who are the legal Repreſentatives, but not to give Damages to the Party injured. But, with great Submiſſion, there is no weight at all in this Diſtinction; for, as it is plain that the Elector is not, in this Caſe, deprived of his Vote, and therefore ſuffers no damage, ſo it is alſo evident that the Judgment of the Houſe of Commons, in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, muſt be concluſive to all Intents and Purpoſes whatſoever. It is contrary to the Reaſon of all Laws, that the Behaviour of an Officer ſhould be ſubject to the Determination of two independant Juriſdictions; or that he ſhould be innocent by the Judgment of a ſuperior Court, and guilty by the Judgment of an inferior; or that he ſhould be twice puniſhed for the ſame Offence. No Man can ſerve two Maſters; the Officer, at this rate, will be every way enſnared, and made liable to Puniſhment, whether he does his duty or not; if he accepts illegal Votes on the Poll, he will forfeit 500 l. by the Statute, for a falſe Return; if he refuſes them, he may be ruined by a multitude of Actions; for if one may bring an Action, there may be five hundred, ſince every Man, at this rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this conſiſtent with the Freedom of Elections, in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors ſhould be free to offer their Votes, ſo the Officers ſhould be free to judge whether they ought to be entered on the Poll, or not; and they ought not to be accountable to any but the Houſe of Commons, whoſe Servants they are, in all Matters relating to Elections, and who are entruſted

entruſted with the Determination of all Matters and Caſes relating thereto; and they may as well puniſh them for taking illegal Votes on the Poll, as for not taking thoſe that are legal. In neither of which Caſes have the Judges of the Commmon-Law any Juriſdiction, tho' there is the ſame reaſon in both, to take care that every the meaneſt Subject may have Relief for any Injury done him; but we are not to take more care of the meaneſt Subject than of the whole Houſe of Commons. The greateſt Subject in England ought to have no Relief but what is conſiſtent with the Law of Parliament, and the Safety of the Conſtitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the Houſe of Peers, the Lords will be the ſole Judges at laſt, who have Votes to chuſe a Houſe of Commons; which is directly contrary to the fundamental Maxim of the Law and Cuſtom of Parliament, that the two Houſes are mutual Checks to each other, and ſole Judges of their own Privileges. Anno 3 Ann. 1704.

'This is an excellent Conſtitution, and admirably well contrived for the common Safety: But how can this Conſtitution be preſerved, if the Lords can puniſh our Officers, and govern our Elections? This will be the way to deſtroy all Checks, and to make the Houſe of Commons dependent on the Lords; and then I cannot ſee upon what Foundation you can be ſaid to ſit here to do any ſervice for your Country.

'Others inſiſt that this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common-Law, ſo is every Incident belonging to it. This Argument is plauſible at firſt ſight, but in reality there is nothing in it; for tho' the Commons of England have ſubmitted their private Differences to Arbitrators, or Judges, indifferently choſen and appointed by the Prince, the common Parent of the People; yet they have never ſubmitted their fundamental Rights and Privileges, which they hold in their public and political Capacities, as a free Branch of the High Court of Parliament, to any but their own Repreſentatives, who are choſen and appointed by themſelves. This is not a Caſe, properly ſpeaking, between Party and Party, but between the Lords and Commons; becauſe the Determination of this Caſe brings the whole Right in queſtion, who have a Privilege to judge of the Qualification of Electors, to give their Votes in Election of Members to ſerve in Parliament, whether the Lords or the Commons? It is not now the Queſtion who hath the beſt Right to a Freehold or Freedom, or to any thing that is incident to it; but whether the Commons of England ſhall have any Freeholds or Freedoms at all? or, which is the ſame thing in effect, whether they ſhould have any Security for thoſe Rights or not? For if the Lords are Judges of

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your Privileges, you can hold no Right but during their Pleasure.

'The Lords seem to contend for the Right of the Subject, but I wish it be not for a Power to enable themselves to judge and determine, as they think fit, of all our Rights and Liberties; for this is the necessary Consequence of allowing an Elector to have a Remedy in any other Place but within these Walls.

'This is my humble Opinion; and if I am mistaken, other Gentlemen will set me right. This is certainly a Matter of the highest Importance to the Welfare of the Subject, and I doubt not but they will very well consider it before they give way to the establishing a Precedent that tends to destroy the Privileges of this House, or the Liberties of their Country.

'A great Tenderness is expressed for this poor Man, whose Vote has been refused: But whether he had a right to give his Vote is very much questioned, and never yet determined by this House, who has the proper Judicature thereof. But admitting he had a Vote, whether ought to be preferred, a private Interest or the public Safety? Whether will be most for the Honour of this House and the Interest of our Electors, the Care of a private Person by a new-invented Action, neither warranted by Reason, Precedent, or any established Law; or the Care of the Parliament, and the Constitution on which depend the Rights and Liberties of all the Commons of England.

'Sir, I beg pardon for taking up so much of your time, but I must confess it seems to me, that our All depends upon a right Determination of this Matter; for I cannot see any other Reason why this new Device is supported by the Lords, but only to render you precarious and useless.'

Sir Gilbert Dolben.

'Mr. Freeman, I shall not trouble you very long at this time of day; I think the Point in Debate has been truly stated by the Gentlemen who insisted on this Question, Whether an Action will lie for an Elector, for having been refused his Vote at the Election of a Member to serve in Parliament? A learned Gentleman would have the Question to be, not whether an Action will lie, but whether this House has the sole Right of determining that Matter, and of giving remedy in it. I confess I think it is more properly stated the other way: but the thing is scarce worth a Dispute, since which way soever you turn the Tables it comes to the same Point, and one of the Questions will in consequence be resolved by the Resolution of the other. For if that Question be put which is proposed by the Gentleman, and carried in the Affirmative, that this House has the sole Right of determining this, and all other Matters whatsoever that concern the Right of Election; then it must follow, that whoever

ever is wronged in any ſuch reſpect, cannot be redreſſed by Action, ſince the Right of determining in Caſes of this nature, is not in the Courts below, but ſolely in this Houſe. Anno 3 Ann. 1704.

'I ſhall not offer you any Arguments to prove this ſole Right, many having been urged by others; but I will conſider ſome things (without taking up much of your time,) that have been offered as Objections to it.

'Some Gentlemen have made a diſtinction, in this Caſe, between the Right of Electors and of the Elected; and they will have it, that the Courts below may decide the firſt, but not the laſt; whereas, in my poor Opinion, the Deciſion of the Elector's Right muſt neceſſarily, in many Caſes, decide who has a right to be elected. For ſuppoſe a common Caſe, that one of the Candidates inſiſts upon an Election by a ſelect Number, and the other upon a popular Election: If, in this Caſe one of the Populace be refuſed his Vote, upon a Pretence that he is not of the ſelect number, whereupon he brings his Action againſt the Officer; will not the Event of that Trial determine (in Conſequence) the Right of the Candidates? Surely it muſt; ſince if it go for the Plaintiff, he for whom the Plaintiff offered to vote, and who had the popular Intereſt, will appear to have had the Right of Election; and ſo will the other Candidate, if it go for the Defendant. Several other Caſes to the ſame purpoſe might be put: So that if an Action of this nature ſhould lie, it muſt (as I apprehend) unavoidably follow, that Weſtminſter-Hall by original Action, and by Writ of Error the Houſe of Lords, will have power to determine, (at leaſt conſequentially,) who has a Right to ſit in this Houſe, and who not. And how conſiſtent ſuch a Determination will be with your undeniable Right, (acknowledged on all ſides) of determining the Elections of your Members, excluſive of all other Juriſdictions, I leave to Gentlemen to conſider.

'A learned Perſon was pleaſed to object, that Right is founded upon Uſage; and if this Houſe had the ſole Right of judging in a Caſe of this nature, where a ſingle Elector is wronged, doubtleſs there would be ſome Precedent of Relief given to ſuch an injured Perſon. But (ſays the Gentleman) there is no ſuch Precedent, and therefore it muſt follow, that this Houſe has not the ſole Right of relieving in that Caſe. I think I may ſafely deny his firſt Propoſition, as he applies it to the Rights of this Houſe, which (generally ſpeaking) are not founded upon Uſage. Sir, the Rights of Parliament are chiefly founded upon the Nature and Conſtitution of Parliaments. Uſage is indeed a Corroboration, and an Evidence of thoſe Rights; but the Foundation of them, is our being a part of the Legiſlature, whereby we neceſſarily become inveſted with ſuch Rights and Privileges,

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as enable us to act, and to diſcharge our Duty, in that great Capacity: So that it is not ſo much what has been uſed, as what is neceſſary to the Support of our Conſtitution, that muſt be the Rule and Meaſure in determining the Rights of the Houſe of Commons.

'But neither has Uſage been wanting in this Caſe: For whereas the Gentleman aſſerts, that there is no Precedent where this Houſe has given Relief to a wronged Elector, (with Submiſſion,) ſeveral ſuch Precedents appear upon your Books, particularly in the Caſe of Banbury, where four or five of the Inhabitants complained, and the Houſe gave a Remedy. And I cannot ſee why, if it has been given to four, it may not be given to one; nay, I ſhould think if more than one have been relieved, *à fortiori* one ſhould be relievable.

'But it ſeems to me, that the Argument drawn from Uſage, goes much further than the learned Gentleman intended it ſhould: for if all right be founded upon Uſage, all Right of Action muſt be ſo founded; and then what becomes of this Action which the Gentleman has laboured to ſupport? If Uſage be nothing elſe but the Repetition of the like Acts, then this Action (according to the Gentleman's Rule, that Uſage is the Foundation of Right,) cannot be rightful, unleſs there hath been a Repetition of the like Action.

'Nor can it be ſaid, that this is the firſt time any ſuch Cauſe of Action has ariſen, and that therefore it could not have been brought before; for there has ſcarce been a Parliament called in any Reign, but ſome or other has, without doubt, been wrongfully refuſed his Vote: So that the Cauſe having been frequent, it muſt have had the like effect ere now, in Caſe ſuch a wrong could have been redreſſed by bringing ſuch an Action.

'But no Gentleman has pretended to ſay, that any Action of this nature was ever brought before; and therefore we may infer from the learned Gentleman's own Poſition, as likewiſe from the Authority of Littleton's Text, that, ſince none has been brought, none can be brought. And this has been the conſtant Opinion of the Courts in Weſtminſter-Hall, the Judges having, upon every Occaſion, where the Rights of Parliament have fallen under their Conſideration, in all times declared, that nothing of that kind is within their Juriſdiction; nor can they judge of any ſuch matter, farther than as they are impowered by particular Statutes.

'And this was the Reaſon why the Judgment in Barnardiſton's Caſe, given in the Queen's-Bench, was reverſed in the Exchequer-Chamber, becauſe it was a thing purely of parliamentary Cognizance; the Houſe of Commons having the ſole power of determining all matters relating to Elections and

and Returns, except in Statute-Caſes. Nay, the Court of King's-Bench had declared, they would not have proceeded in that Action of Barnardiſton, had it not been grounded upon a precedent Judgment given in the Houſe of Commons. But the Judges in the Exchequer-Chamber thought, that even the Determination of the Houſe was not a ſufficient Authority to the Courts below, to hold Plea in an Action relating to the Rights of Parliament, tho' the Action was grounded upon that Determination; and therefore they reverſed the Judgment given in that Action, and (which is a mighty ſtrong Circumſtance in that Caſe) that Reverſal was afterwards affirmed in the Houſe of Lords. So that it is plain, even the Lords themſelves were, at that time, of the ſame Opinion of the Judges, that nothing which concerned Elections was cognizable in Weſtminſter-Hall: For otherwiſe they could not have affirmed the Judgment given in the Exchequer-Chamber, which was grounded entirely upon that Maxim. Anno 3 Ann. 1704.

'This appears farther, by what their Lordſhips did in the Caſe of Hollis and Elliot, againſt whom Judgment had been given in the King's-Bench, for what they had ſaid and done in this Houſe. In the Year 1667, the Houſe of Commons voted, that the Judgment given in the King's-Bench againſt thoſe Perſons was illegal, as being againſt the Privilege of Parliament. And this Vote was (as I remember) delivered to the Lords at a Conference, with a deſire of their Concurrence to it: Accordingly, the Lords ſent a Meſſage, that they did concur. Nay, they were ſo zealous, as to deſire the Lord Hollis to bring a Writ of Error upon that Judgment, which was done, and the Judgment was reverſed. From whence it muſt be inferred, that their Lordſhips were then of Opinion, that whatever Judgment is againſt the Privilege of Parliament (that is, of either Houſe of Parliament,) is an illegal Judgment.

'Now to lay theſe two Opinions of the Lords together: If the Houſe of Commons has the ſole Privilege of judging all matters relating to Elections, (upon which ground their Lordſhips affirmed the Reverſal of the Judgment in Barnardiſton's Caſe) and if every Judgment given againſt the Privilege of Parliament b illegal (as their Lordſhips both reſolved, and judged in the Caſe of Hollis and Elliot,) how comes it to paſs, that the Lords have lately thought fit to reverſe the Judgment given in this Caſe of Aſhby and White, which was grounded upon that very Opinion, eſtabliſhed by their Lordſhips in the Caſe of Barnardiſton, that all matters concerning Elections are determinable only in the Houſe of Commons? And conſequently, how can we avoid ſaying, (purſuant to the other Opinion, and to the Judgment they

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gave in the Caſe of Hollis) that their Lordſhips Judgment of Reverſal given upon the Writ of Error in Aſhby's Caſe, being againſt what themſelves have owned to be the Privilege of the Houſe of Commons, is an erroneous, (not to ſay an illegal) Judgment?

'I confeſs I cannot much wonder at its being ſo, when I conſider, that the ſteps their Lordſhips made in proceeding to this Judgment of Reverſal, were ſo very haſty, as not to afford them ſufficient time to weigh and to deliberate upon a matter of ſuch Importance. This Cauſe had depended near a twelvemonth in the King's-Bench, it had been argued ſeveral times at the Bar, and at length ſeriatim by the Juſtices, three of whom, upon the Reaſon of former Reſolutions, gave Judgment againſt the Plaintiff, that the Action does not lie: And yet no ſooner was this Writ of Error brought, but the Errors are immediately argued; and upon the firſt Argument, the Opinion of the Judges are required; and notwithſtanding they deſired time but till the next day to conſider of the Caſe, the Lords (as I am very well aſſured) would not allow them an Hour; but obliged them to deliver their preſent Thoughts, which tho' ſeveral of them expreſſed very doubtfully, and ſeveral others were for affirming the Judgment; yet their Lordſhips were ſo very clear, and ſo determinate in the Point, that, without any farther Conſideration, the Judgment was reverſed.

'And now I deſire Gentlemen to judge, whether, in this Inſtance, the Lords have ſhewn that Regard either to the Privileges, or to the Dignity of this Houſe, which their Anceſtors, and themſelves, had formerly expreſſed upon the Occaſions before mentioned.

'I will take notice but of one thing more, which fell from a learned Gentleman, who inſiſted, that the Election to Parliament is not a Service, but a Privilege, becauſe double Damages are given by the late Act concerning Returns. I have caſt my Eye upon that Act, and I think, if the Preamble be read, it will appear, that Gentleman was ſomewhat unfortunate in appealing to it; for the Preamble calls the Election to Parliament, a Service, in expreſs terms, and certainly with good Reaſon; if the Houſe will give me leave, I will read it.

'Whereas falſe and double Returns, of Members to ſerve in Parliament, are an Abuſe of Truſt in a matter of the greateſt Conſequence to the Kingdom, and not only an Injury to the Perſons duly choſen, by keeping them from their Service in the Houſe of Commons and putting them to great expence to make their Elections appear; but alſo to the Counties, Cities, Boroughs, and Cinque-ports by which they are choſen, and the Buſineſs of Parliament diſturbed and delayed thereby; Be it therefore enacted,——

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'Sir, not to trouble you any longer, I am entirely for the Question, as it is ſtated.'

Mr. King, (afterwards Lord King. and Lord Chancellor.)

'That which calls me up, in the firſt Place, is what that honourable Gentleman, juſt againſt me, was pleaſed to intimate, as if the Right of electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that ſpoke laſt, is of the ſame Opinion. Truly, I am loth to tell you my own, without deſiring the Act 25 Car. II. 9 cap. may be read.

Members. No, no.

'Tis an Act to enable the County-Palatine of Durham to ſend Members to Parliament, and it recites, that they had not, before that time, had the Liberty, and Privilege of electing and ſending any Members to Parliament: Where you ſee the Legiſlature call it a Liberty and Privilege; and if the Legiſlature call it ſo, I think I may venture to call it ſo too. And if it be a Liberty and Privilege, then the queſtion will be, whether it does not ſtand on the ſame bottom with our Liberties and Privileges? In caſe of any other Franchiſe or Liberty, an Action lies at Common-Law for the Breach thereof; and why an Action ſhould not lie at Common-Law for the Breach of this Franchiſe, as well as for the Breach of every other Franchiſe, is to me very ſtrange. Gentlemen take it for granted, this is purely an Action at Common Law, and no Statute hath any influence on it. Now there is a Statute which hath not been mentioned, only I muſt firſt premiſe that which, I think, no body will deny, *viz.* That wherever an Act of Parliament does forbid any thing, if any body be injured by the doing of the thing ſo prohibited by that Act, in Conſequence of Law, the Perſon injured hath an Action: I ſay, there is a Statute that forbids diſturbances or hindrances in Matters of Elections; And, by Conſequence of Law, the Statute gives an Action to the Party injured, againſt the Perſon diſturbing or hindering him in his Election. The Statute I mean is the 3 Ed. I. 5 cap. That is a poſitive Law whereby all Diſturbances in Elections are forbid: Every Man is forbid to hinder or diſturb by Force or Arms, by Malice, or menacing any Man, to make a free Election.

'I ſhall only inſtance in one parallel Caſe, tho' I could in many more, the Statute in Rich. II's time, *de Scand. Mag.* which only forbids the ſpeaking evil of great Men; there is not one word of an Action: yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, becauſe it was prohibited by that Statute. So here, the Statute forbids the diſturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in this Caſe,

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maliciouſly diſturb and hinder the Plaintiff from voting at the Election; and, by a like Conſequence and Operation of Law, this Action is maintainable.

'Gentlemen ſay, this is a new Action never heard of before: It is true, this particular Action was never brought before; but Actions of the ſame kind and nature, and grounded on the ſame Principles and Reaſons of Law, have been brought before. *Et ubi eadem eſt ratio, idem jus.* I could give you many Inſtances of this kind. Was it ever heard, 'till the 20th or 21ſt Car. II. that an Action lay againſt an Officer, for denying a Poll to one who ſtood Candidate, for a Bridge-Maſter? The Mayor denied the Poll, and ſaid, he was judge of the Election: And upon this the Perſon injured brought his Action, and recovered. At the ſame time it was ſaid, there was no ſuch Action heard of before; 'tis true, not that Species, but the Genus was heard of. Another Action was brought 30 Car. II. (which was never heard of before) againſt a Mayor, for refuſing the Plaintiff's Vote for a ſucceeding Mayor.

'I believe every body knows, that all the Law-Books for 400 Years ſay, that the Reverſioner has Liberty to go into an Eſtate of a Tenant for Life, to ſee if he commit waſte. And no Action was ever brought till 16 Jac. I. by a Reverſioner againſt a Tenant for Life, for refuſing to let him in to ſee whether waſte was committed. No Action was ever brought againſt a Maſter of a Ship, for the negligent keeping, and Loſs of Goods on board his Ship, till about the 24 Car. II. and yet the Action lay.

'There was another Action, in K. Car. Iſt's time, brought for a falſe and malicious Proſecution of an Indictment of a Man for Treaſon. There was the ſame Objection; and it was ſaid, that this would deter People from proſecuting. And no body ever dreamt of it before, 'tis true, but it ſtood upon the general Reaſon of the Law; if you do me a wrong, I muſt have a Remedy. And as to what a worthy Gentleman hath ſaid, that there are Inſtances at Common-Law, where a Man ſhall recover, and yet have no damages; 'tis true in real Actions, but let him give me an Inſtance of that in an Action of the Caſe. He recovers nothing there; if he does not recover Damages in real Actions, he recovers the Land itſelf.

Members. The Queſtion, the Queſtion.

Mr. King. 'I find Gentlemen are very uneaſy, I will trouble you no further.

Members. Go on, go on.

Mr. King. 'I agree, the determining the Right of Election belongs to the Houſe of Commons; and they ought to apply to the Houſe of Commons in that Caſe: And I ſhall not depart from

from that, I think I cannot, without ruining the Conſtitution; but that which I ſay is, that this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, againſt an Officer for maliciouſly refuſing his Vote. Put the Caſe this had happened in a County, (for the Law would have been the ſame) that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and tho' he knew he was a Freeholder, yet, the Sheriff ſhould maliciouſly refuſe his Vote: hath the Sheriff done this Man an Injury, or no? This Man does not bring his Action, becauſe the Perſon he would have voted for is not returned, but 'tis becauſe there is an Injury done to his Franchiſe. If I thought the Right of Election was concerned in this Caſe, I would go as far as any, for I think that does belong to the Houſe; but I do not think this is concerned in the preſent Caſe.' Anno 3 Ann. 1704.

'I ſhall be ſhorter than ſome imagine. It has been diſcourſed, whether this be a Privilege, or a Burden, &c. Let them think it a Burden that call it ſo: If it be a Burden 'tis ſuch a Burden as ſome Men ſpend a great part of their Eſtate for, as if it was a Privilege. I think this Reſolution which is propoſed, tends to the encouraging one Man to injure another Man's Franchiſe without any Reparation, which I believe is not very conſiſtent with Law or Reaſon. You have no doubt a Power of puniſhing the Offenders, but you cannot give Damages: I think this is a plain Caſe; here was a Man who had a Right to vote, and was not admitted. Sir Thomas Littleton.

Members. No, no.

'That is admitted upon the Judgment: for the Caſe is made upon the Right; and if he had not proved his Right, he could not have recovered: Then if he was denied his Right, no body will ſay, we can give him Damages. What would you have a poor Man do, come with a Petition, and fee Council, and attend the Parliament for a Month together? The Man it ſeems thought it better to go this way. I think if he had complained, we might have puniſhed the Officer; but for Damages, he could have them no way but this. Sir Thomas Littleton.

'Suppoſe the Judges in Weſtminſter-Hall had been of Opinion, that this Action did lie, and the Conſtables had brought a Writ of Error; what would you have ſaid in a Caſe where a Man had been denied his Privilege of voting, and the Law had given Damages, if the Lords had ſaid no, there ſhall be no Action? I think the Lords have done what is right, I think they have relieved the Perſon injured according to Juſtice; and it does not interfere with your Rights, for he founds his Action upon your Determination.

Members. No, no.

'Mr.

Anno 3 Ann. 1704.

'Mr. Freeman, I desire to have the question read.'

Accordingly Mr. Freeman in the Chair read the question again.

Mr. Walpole. Mr. Serjeant Hooper.

'A Gentleman that spoke last but one, was pleased to say, that if he thought the Right of electing Members was any ways concerned in this Question, he would come heartily into it: I know not what that Gentleman means by it; but believe all future Elections will depend much upon the Determination you make now. If you give the Lords this Jurisdiction, to take cognizance of matters relating to Elections, we must come to them to know whether we have a Right to sit here. One Gentleman said, he could not tell whether the sitting here was a Burden, or a Privilege: I believe it is a Privilege to some, who by sitting here obtain a good Place; but I think as to others, it may be looked upon as a great Burden, to come up and spend a great deal of Money for the public Service; and all the Privilege that I know they have, is to protect their Estates, and serve their Country.

'There is no extravagant thing but may be brought into the House of Lords, if you countenance them in the Jurisdiction they have now taken upon them. Any Action whatsoever, let it belong to any temporal Jurisdiction, may be there determined. I will still suppose, notwithstanding what is objected against the Judges, that they will do their Duty; but Westminster-Hall is now no Barrier: for whatever is there determined, may be brought by Writ of Error into the House of Lords, and they will determine it as they think fit. In the Case of Soame and Barnardiston, the Law was taken to be, that Westminster-Hall had not a Right to intermeddle in these matters. What then hath since altered the Law, unless the Lords have the legislative Power in them? And that I dare say they will have, if you allow this.

'This I must take notice of from the Report now before you, that here is a step made, which if it had been made in another Jurisdiction, I should have given a hard name to it.

'I think, in the first place, the Party should be brought in by the Queen's Process. When Errors are to be assigned, there uses to go out a *Scire Facias*, which is the Queen's Writ; but here is only an Order made, and for what? That the Party shall join issue upon the Writ of Error. Suppose there had been a Release of Errors, must he have joined Issue upon the Errors? And yet it is here so ordered before the Party is heard. I say, if they have a Jurisdiction, the Party ought to be called in by *Scire Facias*: And no Judge, or Judicature, can grant Execution, or Process, but it must be in the Queen's name. As for your Question, I come heartily into it.'

Sir William Strickland.

'Mr. Freeman, I think this Question depends upon two Parts, and I believe it the best way to divide your Question. One,

One Part of it concerns the Rights and Liberties of this House, and I think every body will come up to it: And as I would not leſſen the Privileges that belong to the Houſe of Commons, ſo I would not leſſen any Privilege of the Commons of England, whom we here repreſent. As one are the Privileges of this Houſe, ſo the other concerns the Liberties of the People of England, who can't otherwiſe come to a Remedy when they are abuſed in this Manner. The Gentleman that called it a hard Service, if he would tell his Country ſo, I believe he might be excuſed, and they would ſend another in his Room.' Anno 3 Ann. 1704.

'I will trouble you very little at this time: I think the Point of Learning and Law hath been ſo well ſpoken to, by thoſe learned Gentlemen that have been againſt the Queſtion, that, if I was able, I ſhould ſay nothing more to that. But I think the Queſtion as it is going to be put, is not right; for as the Queſtion ſtands, tho' I can't give my Negative to one Part, I think 'tis impoſſible to give my Affirmative to the other. The Matter before you comes to this ſingle Queſtion, Whether you will encourage, and give a Power to an Officer, be he whom he will, to act arbitrarily; or rather chuſe, in ſuch a Caſe, to do ſomething in favour of the Electors? I am ſure if I deſire to be elected by thoſe that had the Right, I would never give the Officer an Authority to the Prejudice of the Electors. Where you come to ſay, that the ſole Judging of the Qualification of the Electors belongs to the Houſe of Commons only, thoſe, I apprehend, are Words of too large Extent and ill Conſequence. Suppoſe there was an Action brought upon the laſt Act of Parliament, for a falſe or double Return.' Mr. Walpole. (afterwards Sir Robert, and Chancellor of the Exchequer.)

'There is an Exception in the Queſtion as to that.' Mr. Freeman.

'I know there is; but ſuppoſe an Action is brought upon that Statute, the Officer may have proceeded with the greateſt Impartiality, may have taken the Poll with the greateſt Exactneſs and Juſtice, and there may appear to be an equal Number of Votes for each Candidate; whereupon he makes a Double-Return, and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman that had the Favour of the Committee, (tho' afterwards poſſibly it might be made appear, that by Bribery or Corruption, and at a great Expence, he procured himſelf to be elected,) after you have voted him duly elected, he hath nothing to do but to try his Action, and ſee if he can make his double Damages amount to his Expences. The firſt thing he is to do, is to produce the Vote of the Houſe of Commons, that declared him duly elected, contrary, perhaps, to the laſt Determination in Parliament, which in every Place, is to be the Guide to the Returning-Officer. But ſhall there Mr. Walpole.

Anno 3 Ann. 1704.

there then be given in Evidence no Qualification of the Electors? Nothing to prove that the Persons admitted to vote were qualified according to such last Determination? Or shall that Vote of the House of Commons, that was intended only to bring him into this House, recover him 5 or 600l. Damages? I take it to be so as the Law stands. Now it ought to be seen who hath the greater Number of legal Votes, and whether duly qualified; and in that Case you must suffer the Matter again to be tried by the Court, and you do, in some measure, make them Judges of the Qualifications of the Electors; if it were otherwise, they could not enquire into the Majority of legal Votes.

'What happens in the Case of a Mayor, may be in the Case of a Sheriff: If a Mayor or a Constable may deny a Man his Vote, that hath an uncontroverted Right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a Majority for whom he pleases. You had once the Case before you, Whether a Sheriff could refuse a Scrutiny, and one or two Gentlemen would have given that Power to a Sheriff: but a learned Gentleman thought it a dangerous Question, and he desired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and thought it a dangerous thing to determine whether the Officer had that Power one way or another? I think that Part of the Question, which concerns the Qualification of the Electors ought to be left out.'

Mr. Freeman. 'I will read the Question, *(which he did.)*

Marquis of Hartington.

'Sir, I think it is a constant Rule, where a Question is complicated, 'tis the Right of every Member, if he desire it, to have the Question divided, and I think it regular to do it by an Amendment; and therefore I second that worthy Gentleman, that you would leave out those Words that relate to the Qualification of the Electors.'

Mr. Solicitor-General.

'My Lord is undoubtedly right in what he desires; that if there be any Words in the Question to which Gentlemen have a dislike, that Question is not to be put; but, only Whether those Words shall stand Part of the Question: Therefore if those Words of the Qualification of the Electors do give Offence, it must be put, Whether they shall stand Part of the Question? But I hope at the same time Gentlemen will apprehend, that leaving out those Words, leaves out all you debated on.'

Sir Christopher Musgrave.

'No doubt, if any Question is complicated, Gentlemen do not know how to give an Affirmative or a Negative, and you must divide it: But I hope Gentlemen will consider the latter Part of the Question is the main thing whereon you have debated; for, if you do not assert that you have the Power

Power of Determining the Qualifications of the Electors you give up the Right of the Commons of England: I do agree that the Queſtion may be divided.' Anno 3 Ann. 1704.

'That which is debated now, is, Whether theſe Words ſhall ſtand Part of the Queſtion.' Mr. Freeman.

'Sir, I think the Queſtion ought to be divided.' Sir Thomas Meres.

'The Queſtion, as I have it upon my Paper, is this, That according to the known Law and Uſage of Parliament, neither the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons of England in Parliament aſſembled, except, in ſuch Caſes as are ſpecially provided for by Act of Parliament. Mr. Freeman.

'But ſome Gentlemen are for leaving out theſe Words [neither the Qualification of any Elector, or] ſo that I muſt put a Queſtion, Whether theſe Words ſhall ſtand Part of the Queſtion'

Members. Aye, aye.

Then Mr. Freeman put the Queſtion, and the Committee divided.

Teller for the Aye's, Mr. Gulſton —·— —— 215
Teller for the No's, Mr. Wylde —— —— —— ——· 97

So it was carried, that thoſe Words ſhould ſtand Part of the Queſtion.

And the main Queſtion being put, Votes on the Queſtion.

Reſolved, That, according to the known Law and Uſage of Parliament, neither the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons of England in Parliament aſſembled, except in ſuch Caſes as are ſpecially provided for by Act of Parliament.

Reſolved, That the Examining and Determining the Qualification or Right of any Elector, or any Perſon elected to ſerve in Parliament, in any Court of Law, or elſewhere than before the Commons of England in Parliament aſſembled, except in ſuch Caſes as are ſpecially provided for by Act of Parliament, will expoſe all Mayors, Bailiffs, and other Officers, who are obliged to take the Poll, and make a Return thereupon, to Multiplicity of Actions, vexatious Suits, and unſupportable Expences, and will ſubject them to different and independent Juriſdictions, and inconſiſtent Determinations in the ſame Caſe, without Relief.

Reſolved, That Matthew Aſhby, having, in Contempt of the Juriſdiction of this Houſe, commenced and proſecuted an Action at Common-Law againſt William White, and others, the Conſtables of Aylesbury, for not receiving his Vote at an Election of Burgeſſes to ſerve in Parliament for the ſaid Bo-

Anno 3 Ann. 1704.

Borough of Aylesbury, is guilty of a Breach of the Privilege of this Houſe.

Reſolved, That whoever ſhall preſume to commence or proſecute any Action, Indictment, or Information at Common-Law, which ſhall bring the Right of Electors, or Perſons elected to ſerve in Parliament, to the Determination of any other Juriſdiction than that of the Houſe of Commons, except in Caſes ſpecially provided for by Act of Parliament, ſuch Perſon and Perſons, and all Attornies, Solicitors, Counſellors, Serjeants-at-Law, ſoliciting, proſecuting, or pleading in any ſuch Caſe, are guilty of a high Breach of the Privilege of this Houſe.

Ordered, The ſaid Reſolutions to be fixed up on Weſtminſter-Hall Gate, ſigned by the Clerk.

Theſe Reſolutions, with this (to wit,

Reſolved, That, according to the known Laws and Uſage of Parliament, it is the ſole Right of the Commons of England in Parliament aſſembled, except in Caſes otherwiſe provided for by Act of Parliament, to examine and determine all Matters relating to the Right of Elections of their own Members)

Before paſſed in the Committee, were reported to the Houſe.

'Jan. 26. When the firſt Reſolution was not oppoſed, but, after the ſecond Reſolution (*viz.*

'That, according to the known Law and Uſage of Parliament, neither the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons of England in Parliament aſſembled, except in ſuch Caſes as are ſpecially provided for by Act of Parliament)

Was read the ſecond time by the Clerk, the Queſtion (according to Order) being propoſed to agree with the Committee in that Reſolution, the Marquis of Hartington ſtood up in his Place, and ſpoke to this effect:

Debate on the Report.

Marquis of Hartington.

'I do not expect the Houſe will be of a different Opinion from the Committee; but I think it is my Duty, when I apprehend what you are doing will be of ill Conſequence to the Conſtitution, to give my Diſſent in every Step. I think it will be dangerous to the very Being of this Houſe. If this Maxim had been allowed formerly, I think there would have been no need of taking away of Charters, and of *Quo Warranto's*: By the Influence of Officers they might have filled this Houſe with what Members they had pleaſed, and then they could have voted themſelves duly elected.'

Sir William Strickland.

'Mr. Speaker, I cannot agree to this Reſolution: I think it deprives the People of England of their Birth-Right: For they who have Freeholds in any of your Counties, or Free-

dom

doms in any Corporation, have as much Right to vote in Elections to Parliament, as they have to their Eſtates. And if any Gentleman would ſubject them to ſuch arbitrary Proceedings, that a Sheriff or any other Officer may deny them this Privilege, give me liberty to ſay, I muſt be always againſt any ſuch thing; for tho' you can puniſh the Officer, you cannot give any Satisfaction to him that receives the Injury. Anno 3 Ann. 1704.

'Sir, I do not riſe up to trouble you long, but to ſpeak to one Point that was mentioned by a noble Lord over the way. I ſhall be as tender as any Man alive, of doing any thing againſt the Liberty of the People; but I am for this; becauſe I take it to be the greateſt Security for their Liberty. The noble Lord was pleaſed to take notice, that, in the conſequence, the Crown would have a great Influence on thoſe that are to return the Members of the Houſe of Commons; and when they were in, they might vote for one another. I cannot think that the Liberties of the People of England are ſafer in any Hands below, or that the Influence of the Crown will be ſtronger here than in other Courts.' Mr. St. John.

'I think that Gentleman hath not anſwered what I ſaid: I ſhall never have any Suſpicion of any that ſit in the Houſe now; but when thoſe that have no Right are returned, and make a Majority, I think it will not be ſafe.' Marquis of Hartington.

'I do not apprehend that Conſequence from this Reſolution. I think if it was ſo, this ſhould have been offered before the firſt Reſolution was paſſed, which hath paſſed in the Houſe and Committee *Nemine Contradicente*; for you cannot determine the Right of any Members ſitting here, without determining the Right of the Electors.' Mr. Ward.

'I cannot but think it will be harder to influence this Houſe to get an Ill-Vote, than it will be in another Place: However, if I am a Free-holder and have a Right to vote in a County; or a Freeman, and have a Right to vote in a Borough, by admitting Perſons to vote that have no Right, it may be as much Prejudice to me; for that may make my Vote ſignify nothing: And there is as much Injury one way as the other. If all the People of England, who have a Vote, ſhould go together by the Ears in Weſtminſter-Hall, and diſpute there who has a Right to vote, and who not, I believe the Judges of the Common-Law, and noble Peers of the other Houſe, would be glad, in a little time, to reſtore the Right where it is, it would breed ſo much Confuſion. If Gentlemen are not ſatisfied already, they may eaſily be ſo, that there is no Defect of Power in this Houſe, but they have a Power to do juſtice in all Caſes of Elections; and I hope every body will take care, not only to maintain the Rights of the People that ſent them hither, but the Truſt lodged in them, which they cannot depart from by the Rules of Juſtice. Mr. Lowndes.

Anno 3 Ann. 1704.

Then the ſecond, with the other three Reſolutions paſſed in the Committee, were agreed to by the Houſe without a Diviſion, with this Amendment only, of leaving out (*at Common-Law*) in the fifth Reſolution.

Proceedings againſt the Author of the Obſervator.

In the mean time, the Author of a weekly Paper call'd the Obſervator having ventured to publiſh his Remarks on Occaſional Conformity, a Complaint was made againſt him in the Houſe of Commons; and, upon Examination of the Matter, it was reſolved, That the Obſervator, from the 8th to the 11th of December 1703, contains Matters ſcandalous and malicious, reflecting upon the Proceedings of the Houſe, tending to the promoting of Sedition in the Kingdom: And that Tutchin the Author, How the Printer, and Bragg the Publiſher of that Paper, ſhould be taken into Cuſtody of the Serjeant at Arms attending the Houſe. Thereupon Tutchin abſconded, and notwithſtanding the Cenſure paſs'd upon him, went on in his way of Writing, and made ſharp Reflections upon a Speech ſaid to have been made by Sir John Packington, in the Houſe of Commons, in favour of the Bill to prevent Occaſional Conformity. A freſh Complaint being made again for this ſecond Offence, the Commons reſolved, That the Author, Printer, and Publiſher of *the Obſervator*, having broke the Privilege of the Houſe, and ſince abſconded from Juſtice; an humble Addreſs be preſented to her Majeſty, that ſhe would pleaſe to iſſue her royal Proclamation for apprehending them, promiſing a Reward for Diſcovery of them.

Her Majeſty, on the 7th of February, ordered the following Meſſage to be delivered to the Houſe of Commons.

Anne R.

Queen's Meſſage about the poor Clergy.

'Her Majeſty, having taken into her ſerious Conſideration 'the mean and inſufficient Maintenance belonging to the 'Clergy in divers Parts of the Kingdom, to give them ſome 'Eaſe, hath been pleaſed to remit the Arrears of the Tenths 'to the poor Clergy; and for an Augmentation of their 'Maintenance, her Majeſty is pleaſed to declare, that ſhe 'will make a Grant of her whole Revenue ariſing out of the 'Firſt Fruits and Tenths, as far it now is, or ſhall become 'free from Incumbrances, to be applied to this purpoſe; and 'if the Houſe of Commons can find any proper Method by 'which her Majeſty's good Intentions to the poor Clergy may 'be made more effectual, it will be a great Advantage to 'the Public, and very acceptable to her Majeſty.'

Upon which the Houſe of Commons preſented the following Addreſs.

Commons Addreſs upon it.

'Moſt gracious Sovereign, We your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, beg leave to preſent our moſt humble and hearty Thanks to your Majeſty, for your moſt gracious Meſſage, in which you were

were pleaſed to declare your royal Bounty, in remitting the Arrears of the Tenths due from your poor Clergy; and in charitably deſigning for the future to apply your Majeſty's whole Revenue, ariſing from the Firſt Fruits and Tenths, in Augmentation of their Maintenance. Anno 3 Ann. 1704.

'We are juſtly ſenſible of your Majeſty's pious Concern for the Church of England, and of the great Advantage it will receive from your Majeſty's unparallel'd Goodneſs, in giving up ſuch a Part of your Majeſty's Revenue towards the better Proviſion for the poorer Clergy, who were not ſufficiently provided for at the happy Reformation of Religion under your Royal Anceſtors.

'Your Majeſty's faithful Commons will uſe their utmoſt Endeavours to render your Majeſty's charitable Intentions moſt effectual; and will, upon this, and all other Occaſions, readily apply themſelves to ſuch proper Methods, as may beſt conduce to the Support of the Clergy, and to the Honour, Intereſt, and future Security of the Church of England as by Law eſtabliſhed.'

Her Majeſty was pleaſed to give this gracious Anſwer:

'Gentlemen, I am very glad to find my Meſſage has been 'ſo acceptable to you; I hope you will effectually improve 'it, to the Advantage of the Church of England as by Law 'eſtabliſhed, for which no body can have a more true and 'real Concern than myſelf.' Queen's Anſwer.

On the 23d the Prolocutor of the lower Houſe of Convocation, and ſome more of the ſame Houſe, attended the Speaker of the Houſe of Commons with the following Order, which Mr. Speaker read next Day to the Houſe.

Ordered, 'That Mr. Prolocutor, Mr. Dean of Wincheſter, Dr. Edwards, Dr. Smaldridge, and Dr. Atterbury, do attend Mr. Speaker of the honourable Houſe of Commons, and acquaint him, That, after the Clergy's having waited on her Majeſty, with their moſt humble Senſe of her unexampled Bounty to her poor Clergy, the lower Houſe of Convocation cannot but take Notice, with how much Kindneſs and Generoſity yourſelf, Sir, and the honourable Houſe of Commons, had prevented them, by your Addreſs upon the ſame Subject: Wherein you have been pleaſed not only to expreſs your Readineſs to aſſiſt and further her Majeſty's moſt charitable Intentions, but ſo far likewiſe to eſpouſe the Intereſt of the Clergy, as to pay your own moſt hearty Thanks on their Behalf. Order of Thanks of the lower Houſe of Convocation to the Commons.

'Our Houſe, Sir, commands me to return their moſt humble Acknowlegdements to you and to that honourable Houſe, for this ſo ſingular a Favour; which you have enlarged by promiſing to purſue ſuch Methods as may beſt conduce to the Support, Intereſt and future Security of the Church of

Anno 3 Ann. 1704.

of England, as now by Law eſtabliſhed: And they beg leave at the ſame time, with the moſt ſenſible Gratitude to profeſs, that they cannot have any greater Aſſurance of what your honourable Houſe has now promiſed, than the conſtant Experience they have had of what it always has perform'd.'

H. Aldrich, Prolocutor.

Next Day her Majeſty came to the Houſe of Peers, and was pleaſed to give the Royal Aſſent to the following Acts.

Queen ſigns Acts.

An Act for granting an Aid to her Majeſty for carrying on the War, and other her Majeſty's Occaſions, by ſelling Annuities at ſeveral Rates, and for ſuch reſpective Terms or Eſtates as are therein mentioned.

An Act for the public regiſtring of all Deeds, Conveyances and Wills, that ſhall be made of any Honours, Manors, Lands, Tenements, or Hereditaments, within the Weſt-Riding of the County of York, after the nine and twentieth Day of September, one thouſand ſeven hundred and four.

An Act for the erecting a Work-Houſe in the City of Worceſter, and for ſetting the Poor on Work there.

An Act for enlarging the Term of Years granted by an Act paſſed in the Seſſion of Parliament held in the eleventh and twelfth of King William the third, for the Repair of Dover Harbour.

An Act to repeal a Proviſo in an Act of the fourth Year of the Reign of King William and Queen Mary, which prevents the Citizens of the City of York from diſpoſing of their Perſonal Eſtates by their Wills, as others inhabiting within the Province of York by that Act may do.

An Act for the Encreaſe of Seamen, and better Encouragement of Navigation, and Security of the Coal-Trade.

And to twenty eight private Acts.

Books cenſured by the Commons.

In the mean time, the Houſe of Commons having appointed a Committee to examine two Books, one entitled, *Second Thoughts concerning the human Soul, as believed to be a Spiritual, Immortal Subſtance, united to human Body, to be a plain heatheniſh Invention, and not conſonant to the Principles of Philoſophy, Reaſon and Religion*: The other, *The Grand Eſſay; or, A Vindication of Reaſon and Religion againſt the Impoſtures of Philoſophy*. And the Committee having reported ſuch Paſſages out of thoſe Books, as were offenſive, the Houſe reſolved, That the ſaid Books contain'd divers Doctrines and Poſitions contrary to the Doctrine of the Church of England, and tending to the Subverſion of the Chriſtian Religion; and ordered the ſaid Books to be burnt by the Hands of the common Hangman.

April 3. The Queen came to the Houſe of Peers, and was pleaſed to give the Royal Aſſent to

Queen ſigns Acts.

An Act for granting to her Majeſty an additional Subſidy of Tonnage and Poundage for three Years, and for laying a further Duty

Duty upon French Wines, condemned as lawful Prize, and for ascertaining the Values of unrated Goods imported from the East-Indies. Anno 3 Ann. 1704.

An Act for the better ſecuring and regulating the Duties upon Salt.

An Act for the more regular paying and aſſigning the Annuities, after the Rate of three Pounds per Cent. per Annum, *payable to ſeveral Bankers and other Patentees, or thoſe claiming under them.*

An Act for the making more effectual her Majeſty's gracious Intentions for the Augmentation of the Maintenance of the poor Clergy, by enabling her Majeſty to grant in Perpetuity the Revenues of the Firſt Fruits and Tenths; and alſo for enabling any other Perſons to make Grants for the ſame Purpoſe.

An Act for raiſing Recruits for the Land-Forces and Marines, and for diſpenſing with part of the Act for the Encouragement and Encreaſe of Shipping and Navigation, during the preſent War.

An Act for the further Explanation and Regulation of Privileges of Parliament, in relation to Perſons in public Offices.

An Act for the Diſcharge out of Priſon of ſuch inſolvent Debtors as ſhall ſerve, or procure a Perſon to ſerve, in her Majeſty's Fleet or Army.

An Act to enlarge the Time for the Purchaſers of the forfeited Eſtates in Ireland to make the Payments of their Purchaſe-Money.

An Act for prolonging the Time by an Act of Parliament made in the firſt Year of her Majeſty's Reign, for importing thrown Silk of the Growth of Sicily, from Leghorn.

An Act for raiſing the Militia of the Year one thouſand ſeven hundred and four, notwithſtanding the Month's Pay formerly advanced be not repaid.

An Act for better charging ſeveral Accomptants with Intereſt-Monies by them received, or to be received.

An Act for puniſhing Mutiny, Deſertion and falſe Muſters, and for the better paying of the Army and Quarters, and ſatisfying divers Arrears: and for a further Continuance of the Power of the five Commiſſioners for examining and determining the Accounts of the Army.

And to 22 Private Acts.

After which her Majeſty made a moſt gracious Speech to both Houſes, which follows:

'My Lords and Gentlemen,

'I Cannot put an end to this Seſſion, without returning you Thanks for the Willingneſs which you have all expreſſed to ſupport and aſſiſt me in continuing the preſent War. Queen's Speech in Parliament.

'And I muſt thank you, Gentlemen, of the Houſe of Commons, very particularly, for the great Forwardneſs and Zeal

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'Zeal which you have ſhewn, both in the early Diſpatch 'of the Supplies, and in making them ſo effectual for carry- 'ing on the Public Expence, without any additional Burdens 'upon the Country: It ſhall be my Care to improve this 'to the beſt Advantage.

'My Lords and Gentlemen,

'At the opening of this Seſſion I did earneſtly expreſs 'my Deſires of ſeeing you in perfect Unity among your 'ſelves, as the moſt effectual means imaginable to diſap- 'point the Ambition of our Enemies, and reduce them to an 'honourable and laſting Peace; and though this has not 'met with all that Succeſs which I wiſh'd and expected, yet 'being fully convinced, that nothing is ſo neceſſary to our 'common Welfare, I am not diſcouraged from perſiſting in 'the ſame earneſt Deſires, that you would go down into your 'ſeveral Countries, ſo diſpoſed to Moderation and Unity, as 'becomes all thoſe who are joined together in the ſame Re- 'ligion and Intereſt.

'This, I am perſuaded, will make you ſenſible that no- 'thing, next to the Bleſſing of God, can ſo much contri- 'bute to our Succeſs abroad, and to our Safety at home.'

Third Seſſion of Q. Anne's firſt Parliament.

Octob. 29. The Parliament met for the Diſpatch of Buſineſs, when her Majeſty made the following Speech to both Houſes.

'My Lords and Gentlemen,

'THE great and remarkable Succeſs with which God 'hath bleſſed our Arms in this Summer, has ſtir'd up 'our good Subjects in all Parts of the Kingdom, to expreſs 'their unanimous Joy and Satisfaction: And I aſſure myſelf 'you are all come diſpos'd to do every thing that is neceſſary 'for the effectual Proſecution of the War; nothing being 'more obvious, than that a timely Improvement of our pre- 'ſent Advantages will enable us to procure a laſting Founda- 'tion of Security for England, and a firm Support for the Li- 'berty of Europe: This is my Aim. I have no Intereſt, 'nor ever will have, but to promote the Good and Happineſs 'of all my Subjects.

'Gentlemen of the Houſe of Commons,

'I muſt deſire ſuch Supplies of you, as may be requiſite 'for carrying on the next Year's Service, both by Sea and 'Land, and for punctually performing our Treaties with all 'our Allies; the rather, for that ſome of them have juſt Pre- 'tenſions depending ever ſince the laſt War: And I need 'not put you in mind of what Importance it is to preſerve the 'Public Credit, both abroad and at home.

'I believe you will find ſome Charges neceſſary next 'Year, which were not mentioned in the laſt Seſſions, and 'ſome extraordinary Expences incurr'd ſince, which were 'not then provided for.

'I

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'I assure you, that all the Supplies you give, with what I am able to spare from my own Expences, shall be carefully applied to the best Advantage for the Public Service: And I earnestly recommend to you a speedy Dispatch, as that which, under the good Providence of God, we must chiefly depend upon, to disappoint the earliest Designs of our Enemies.

'My Lords and Gentlemen,

'I cannot but tell you how essential it is for attaining those great Ends abroad, of which we have so hopeful a Prospect, that we should be entirely united at home.

'It is plain, our Enemies have no Encouragement left, but what arises from their Hopes of our Divisions; 'tis therefore your Concern not to give the least Countenance to those Hopes.

'My Inclinations are to be kind and indulgent to you all: I hope you will do nothing to endanger the Loss of this Opportunity, which God has put into our Hands, of securing ourselves and all Europe; and that there will be no Contention among you, but who shall most promote the public Welfare.

'Such a Temper as this, in all your Proceedings cannot fail of securing your Reputation both at home and abroad.

'This would make me a happy Queen, whose utmost Endeavours would never be wanting to make you a happy and flourishing People.'

The next day the Commons presented their Address, as follows:

Commons Address to the Queen.

'We your Majesty's most dutiful and loyal Subjects, the Knights, Citizens and Burgesses in Parliament assembled, do beg leave to return to your Majesty our most humble and hearty Thanks for your Majesty's most gracious Speech from the Throne; and to congratulate your Majesty upon the great and glorious Success, with which it has pleased God to bless your Majesty, in the entire Defeat of the united Force of France and Bavaria, (at Blenheim) by the Arms of your Majesty, and your Allies, under the Command, and by the Courage and Conduct of the Duke of Marlborough; and in the Victory obtain'd by your Majesty's Fleet, (off Malaga) under the Command, and by the Courage and Conduct of Sir George Rooke.

'Your Majesty can never be disappointed in your Expectation from us, your faithful Commons, who all come disposed to do every thing necessary for the effectual Prosecution of the War: and therefore your Majesty may depend upon our providing such Supplies, and giving such speedy Dispatch to the Public Business, as may enable your Majesty to pursue these Advantages so happily obtained over the

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Common Enemy; which we can never doubt but your Majesty's Wisdom will improve, to the procuring of a lasting Security for England, and a firm Support for the Liberty of Europe.

'We are truly sensible, that nothing can be more essential for the attaining those great Ends, than to be entirely united at home; we shall therefore use our utmost Endeavours, by all proper Methods, to prevent all Divisions among us; and will have no Contention, but who shall most promote and establish the Public Welfare both in Church and State. Thus your Majesty's Reign will be made happy, and your Memory blessed to all Posterity.'

Her Majesty's most gracious Answer to this Address, is as follows:

Queen's Answer.

'Gentlemen, I return you my hearty Thanks for this Address, and the Assurances you give me of dispatching the Supplies, and avoiding all Divisions; both which, as they are extremely acceptable to me; so they will be advantageous to yourselves, and beneficial to the Public.'

One of the first things we find the Commons go upon at home (to say nothing of the usual Methods of Supplies) was an unanimous Resolution to address her Majesty, 'That she would be pleased to bestow her Bounty upon the Seamen and Land-Forces who had behaved themselves so gallantly in the late Action both by Sea and Land.' And the Address being ordered to be presented by those of that House who were of her Privy-Council, her Majesty return'd Answer, 'That she was always so desirous to give Encouragement to those who did great Services to the Public, that she could not but be well-pleased with the notice they had taken of them in their Address, and that she would take care to give Directions accordingly.'

Queen's Answer to the Commons Address about rewarding Soldiers, &c.

Lord Hallifax's Case.

We are here to observe, that the Right Honourable Charles Lord Hallifax having, by Order of the Commons last Session, been prosecuted for some Defects in passing Accounts as Auditor of the Exchequer, it was done accordingly at the Exchequer-Bar, in Trinity-Term: when the Cause, upon a full Hearing, seem'd to turn in favour of his Lordship. But before the Verdict could be given, a *Noli Prosequi* was produced, and the Matter rested there. But the Commons, Nov. 3. having ordered the Queen's Serjeant and Sollicitor-General, and others her Majesty's Council concern'd in his Prosecution, to lay before them an Account in Writing of what Proceedings had been against him, and the State of that Matter, the same was done on the 7th. and the Consideration thereof being referr'd to the 14th, they then ordered

ordered the Exception taken by my Lord's Council to the Information exhibited againſt him, and allow'd by the Court of the Exchequer, to be laid before them. After which, they referr'd the Matter to the 18th, when the Information and Proceedings, with the Certificate of the Attorney-General, being read, upon a Motion made, it was carried for Adjourning till the 20th, and the Matter afterwards lay dormant. Anno 3 Anæ, 1704.

We are likewiſe to take notice, that, though the Lords had rejected the Occaſional-Conformity Bill the two laſt Seſſions, another was notwithſtanding brought in, and read the firſt time on Novemb. 23. and carried, not without warm Debates, to be read a ſecond time on the 28th; at which time it was debated, with more Vigour than before: but the Queſtion being put, that it ſhould be committed to the Committee of the whole Houſe, to whom the Bill for granting an Aid to her Majeſty by a Land-Tax and otherwiſe, was committed, the Houſe divided: And it paſs'd in the Negative. Yeas 134. Noes 251. Diviſions on the Occaſional-Conformity Bill.

The Report of the Bill was made on Decemb. 5. and a Debate ariſing, Whether it ſhould be engroſs'd or not, it was carried in the Affirmative, Yeas 145, Noes 118. The Bill was read a third time, and paſs'd on the 14th, Yeas 179, Noes 131.

During this Interval, a Complaint being made to the Houſe, that Robert Mead, an Attorney-at-Law, had proceeded in the Cauſe of Aſhby and White, and others, ſince the laſt Seſſion of Parliament, and taken the Defendants in Execution, in Breach of the Privilege of this Houſe: Farther Proceedings in the Caſe of Aſhby and White.

And likewiſe, that, ſince the Reſolutions of this Houſe the laſt Seſſion, upon the Caſe of Aſhby and White, there had been ſeveral new Actions brought by John Paty, John Oviat, John Paton junior, and Henry Baſſe, and proſecuted by the ſaid Robert Mead, againſt the Conſtables of Aylesbury, in Breach of the Privilege of this Houſe:

Ordered, That the Matter of the ſaid Complaint be heard at the Bar of this Houſe upon Tueſday ſevennight. Accordingly all the ſaid Perſons having been then examin'd at the Bar of the Houſe, it was *Reſolved*, That it appears to this Houſe, that John Paty, J Oviat, J. Paton jun. Henry Baſſe and D. Horne, of Aylesbury, have been guilty of commencing and proſecuting an Action at Common-Law, againſt William White, and others, late Conſtables of Aylesbury, for not allowing their Votes in the Election of Members to ſerve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

And that it appears to this Houſe, that Robert Mead has been guilty of ſolliciting and proſecuting (as Attorney at Law) divers Actions at Common-Law, againſt William White

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and others, late Conſtables of Aylesbury, for not allowing divers Votes in the Election of Members to ſerve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

After which it was ordered, that all the ſaid Perſons ſhould be committed to Newgate, except R. Mead, who was taken into Cuſtody by the Serjeant at Arms.

Feb. 24. The Houſe being informed, that there have been Endeavours to bring a Writ of Error on the Proceedings in the Court of Queen's-Bench, upon a Habeas Corpus granted there, for the Perſons committed by this Houſe to Newgate, for Breach of their Privilege, and thereby to bring the Commitments of this Houſe under the Exmination of the Houſe of Peers.*

Reſolved, That an humble Addreſs be preſented to her Majeſty, humbly to lay before her Majeſty the undoubted Right and Privilege of the Commons of England, in Parliament aſſembled, to commit for Breach of Privilege; and that the Commitments of this Houſe are not examinable in any other Court whatſoever: And that no ſuch Writ of Error was ever brought, nor doth any Writ of Error lie in this Caſe. And that, as this Houſe hath expreſſed their Duty to her Majeſty, in giving diſpatch to all the Supplies, ſo they have an entire Confidence in her Majeſty's Goodneſs and Juſtice, that ſhe will not give leave for the bringing any Writ of Error in this Caſe; which will tend to the overthrowing the undoubted Rights and Privileges of the Commons of England.

Ordered, That the ſaid Addreſs be preſented to her Majeſty, by ſuch Members of this Houſe as are of her Majeſty's moſt honourable Privy-Council.

Reſolved, That whoever has abetted, promoted, countenanced or aſſiſted the Proſecution of the ſeveral Writs of *Habeas Corpus*, brought for the Priſoners committed by this Houſe, and ſince their being remanded, have endeavoured the procuring Writs of Error, are guilty of conſpiring to make a difference between the Lords and Commons in Parliament aſſembled, are Diſturbers of the Peace of the Kingdom, and have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament aſſembled.

Ordered,

* *What incenſed the Commons yet more, was the Behaviour of John Paty and John Oviat, two of the Priſoners, who, thinking themſelves wronged in their being remanded to Newgate, humbly petitioned the Queen for a Writ of Error, in order to bring the Judgment of the Court of Queen's-Bench before her Majeſty in Parliament. The Commons were no ſooner informed of theſe Petitions, but they made the above Votes. Annals of Queen Anne, Vol. 3. p. 188.*

Ordered, That a Committee be appointed to examine what Persons have been concerned in solliciting, prosecuting, or pleading, upon the Writs of *Habeas Corpus*, or Writs of Error, on the Behalf of the Persons committed to Newgate for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same. And a Committee was accordingly appointed. Anno 3 Anno. 1704.

The 26th, Mr. Secretary Hedges acquainted the House, that their Address of Saturday last, in relation to the Writs of Error therein mentioned, having been presented to her Majesty, according to the Order, her Majesty was pleased to give this gracious Answer, *viz.*

'Her Majesty is much troubled to find the House of 'Commons of Opinion that her granting the Writs of Error 'mentioned in their Address, is against their Privileges; of 'which her Majesty will always be as tender as of her own 'Prerogative; and therefore the House of Commons may de- 'pend, her Majesty will not do any thing to give them any 'just Occasion of Complaint: But this Matter, relating to 'the Course of judicial Proceedings, being of the highest Im- 'portance, her Majesty thinks it necessary, to weigh and 'consider very carefully what may be proper for her to do, 'in a thing of so great a concern.'

Resolved, That this House will take her Majesty's gracious Answer into Consideration to-morrow morning.

The Earl of Dysert reported, from the Committee appointed to examine what Persons have been concerned in solliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to Newgate for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same, the matter as it appeared to them; which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read: Upon which it was ordered, that all the said Persons so concerned should be taken into Custody for Breach of Privilege.

And tho' the Commons had resolved before to take her Majesty's Answer into Consideration, yet being apprehensive lest her Majesty should grant the Writs of Error, whereby the five Aylesbury-Men might be discharged from their Imprisonment, they ordered them to be removed from Newgate, and taken into the Custody of the Serjeant at Arms; which Order was executed at midnight, with such Circumstances of Severity and Terror, as have been seldom exercised towards the greatest Offenders.

The 28th, Mr. Bromley reported, That the Members appointed to search the Journals of the House of Lords, what Pro-

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Proceedings have been in that Houſe, in relation to the five Perſons committed to Newgate for Breach of the Privilege of this Houſe, had ſearched the ſame accordingly, and had taken thereout what they found relating to the ſame; and alſo Copies of two Petitions of the ſaid Perſons; which he read in his Place, and afterwards delivered in at the Table, where the ſame were read, and are as follow, *viz.*

Feb. 26. Upon reading the Petition of Daniel Horne, Henry Baſſe, and John Paton jun. as alſo the Petition of John Paty, and John Oviat, Priſoners in Newgate, in relation to ſome Proceedings for obtaining the Writs of Error, and praying (amongſt other things) the Protection of this Houſe for their Counſel and Agents:

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Petitions ſhall be taken into Conſideration to-morrow at twelve o'clock, and all the Lords ſummoned to attend; as alſo the Judges in Town, who are to come prepared to ſpeak to the point, whether a Writ of Error be a Writ of Right or a Writ of Grace? And that the Petitioners have notice, that when they ſend to this Houſe the names of their Council and Agents they deſire to be protected, they ſhall have the Protection of this Houſe for them.

In purſuance of the Order of this day made, Daniel Horne, Henry Baſſe, John Paton, jun. John Paty, and John Oviat, Priſoners in Newgate, ſent the Names of their Council and Agents, *viz.*

James Mountague Eſq;
Nicholas Lechmere,
Alexander Denton,
Francis Page,
} Counſellors at Law.

William Lee,
John Harris,
} Attorneys at Law.

Whereupon, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that James Mountague, Eſq; Nicholas Lechmere, Alexander Denton, and Francis Page, Counſellors at Law, and William Lee, and John Harris, Attorneys at Law, ſhall, and they have hereby the Protection and Privilege of this Houſe, in the adviſing, applying for, and proſecuting the ſaid Writs of Error; and that all Keepers of Priſons, and Jaylors, and all Serjeants at Arms, and other Perſons whatſoever, be, and they are hereby (for, or in reſpect of any of the Caſes aforeſaid) ſtrictly prohibited from arreſting, impriſoning, or otherwiſe detaining or moleſting, or charging the ſaid James Mountague Eſq; Nicholas Lechmere, Alexander Denton, Francis Page, William Lee, and John Harris, or any or either of them, as they and every of them will anſwer the contrary to this Houſe.

The

The Serjeant at Arms being called upon to give an Account what he had done purſuant to the Orders of the Houſe on Monday laſt, ſince the Account he gave yeſterday: Anno 3 Ann. 1704.

He gave the Houſe an Account accordingly; that he had found Mr. Denton at his own Chamber, and had him in Cuſtody; but that he could not find the other Perſons.

A Meſſage from the Lords, by Mr. Juſtice Tracy, and Mr. Baron Smith:

'Mr. Speaker, The Lords deſire a preſent Conference with this Houſe in the painted Chamber, about ſome antient fundamental Liberties of the Kingdom.' Which was agreed to, and the Managers being return'd, the Lord Marquis of Hartington reported the Conference, and that it was managed by the Earl of Sunderland, who expreſſed himſelf as followeth: Conference between the two Houſes.

'That the Lords have deſired this Conference with the Houſe of Commons, in order to a good Correſpondence between the two Houſes, which they will always endeavour to preſerve. When either Houſe of Parliament have apprehended the Proceedings of the other to be liable to exception, the ancient parliamentary Method has been to ask a Conference; it being ever ſuppoſed, that when the Matters are fairly laid open, and debated, that which may have been amiſs will be rectified, or elſe the Houſe that made the Objections will be ſatisfied, that their Complaint was not well grounded.

'Such Hopes as theſe have induced the Lords to command us to acquaint you, that, upon the Conſideration of the Petition of Daniel Horne, Henry Baſſe, and John Paton junior, and alſo of the Petition of John Paty, and John Oviat, complaining to the Houſe of Lords, that they have been Priſoners in Newgate for about twelve Weeks, upon ſeveral Warrants, ſigned by the Speaker of the Houſe of Commons, bearing date the 5th of December laſt, for their having commenced and proſecuted Actions at Common-Law, againſt the late Conſtables of Aylesbury, for not allowing their Votes, at an Election of Members to ſerve in Parliament; which Actions, they alledged, they were encouraged to bring, by reaſon of a Judgment given in Parliament upon a Writ of Error, brought in the laſt Seſſion by one Aſhby againſt White, and others; and alſo repreſenting by the ſame Petitions, what had been done by them reſpectively ſince their ſaid Commitment, in order to obtain their Liberty, and praying the Conſideration of the Houſe of Peers upon the whole Matter; and alſo upon Conſideration of a printed Paper, entitled, *The Votes of the Houſe of Commons*, ſigned with the Speaker's Name, and dated the 24th of this Inſtant February; the Houſe of Lords found themſelves obliged to

ſeveral

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ſeveral Reſolutions, which they have commanded us to communicate to you at this Conference; and are as follow:

'1. It is *Reſolved* by the Lords Spiritual and Temporal in Parliament aſſembled, That neither Houſe of Parliament hath any Power, by any Vote, or Declaration, to create to themſelves any new Privilege, that is not warranted by the known Laws and Cuſtoms of Parliament.

'2. *Reſolved*, That every Freeman of England, who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law; and that the commencing and proſecuting an Action at Common-Law, againſt any Perſon (not entitled to Privilege of Parliament,) is no Breach of the Privilege of Parliament.

'3. *Reſolved*, That the Houſe of Commons, in committing to Newgate, Daniel Horne, Henry Baſſe, and John Paton junior, John Paty and John Oviat, for commencing and proſecuting an Action at Common-Law, againſt the late Conſtables of Aylesbury, for not allowing their Votes in Election of Members to ſerve in Parliament, upon pretence that their ſo doing was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe, have aſſumed to themſelves alone a legiſlative Power, by pretending to attribute the Force of a Law to their Declaration, have claimed a Juriſdiction, not warranted by the Conſtitution, and have aſſumed a new Privilege, to which they can ſhew no title by the Law and Cuſtom of Parliament: and have thereby, as far as in them lies, ſubjected the Rights of Engliſhmen, and the Freedom of their Perſons, to the Arbitrary Votes of the Houſe of Commons.

'4. *Reſolved*, That every Engliſhman, who is impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by the due Courſe of Law.

'5. *Reſolved*, That for the Houſe of Commons to cenſure, or puniſh any Perſon, for aſſiſting a Priſoner to procure a Writ of *Habeas Corpus*, or by Vote, or otherwiſe, to deter Men from ſoliciting, proſecuting, and pleading upon ſuch Writ of *Habeas Corpus*, in behalf of ſuch Priſoner, is an Attempt of dangerous Conſequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the neceſſary Aſſiſtance to the Priſoner, upon a Commitment of the Houſe of Commons, which has ever been allowed upon all Commitments by any Authority whatſoever.

'6. *Reſolved*, That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject,

ject, when duly applyed for, (tho' at the Request of either House of Parliament,) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.' Anno 3 Ann. 1704.

'In these Resolutions, the House of Lords have expressed that Regard and Tenderness which they have always had, and will ever maintain for the Rights of the People of England, and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of Law, whereupon the Happiness of our Constitution depends; and they hope that, upon Recollection, the House of Commons will be of the same Opinion in all the Particulars resolved by the Lords, and agree with their Lordships therein.'

Ordered, That the said Report be taken into Consideration to-morrow Morning: When the Managers of the last Conference were appointed to draw up a proper Answer.

March 6. The Serjeant at Arms attending this House, acquainted the House, that a Person had this Morning brought him a Writ of *Habeas Corpus*, under the the great Seal, for Mr. Mountague (in his Custody by order of this House) to be brought (as he was informed) before the Lord-Keeper of the great Seal of England: And he delivered the Writ (under Seal) in at the Table. And it appearing by the Label to be returnable *immediatè*, but not before whom he was to be brought, nor any Officer's name thereto, the Writ was opened by the Clerk, and read, and is as followeth.

Anna dei gratia Ang' Sco' Franc' & Hibern' Regina, fidei defensor, &c. Samueli Powel Ar' Serv' ad arma attenden' Honorab' Dom' commun' ejus deputato & deputatis salutem. Precipimus vobis & cuilibet vestrum quod corpus Jacobi Mountague Ar' nuper capt' & in custod' vestra vel alicujus vel unius vestrum ut dicitur detent' sub salvo & securo conduct' una cum die & causa captionis & detentionis pred' Jacobi Mountague quocunque nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro prehonorab' Nathan Wright Mil' Dom' custod' Mag' sigil' nostri Angl' apud Dom' Mansional' suam in parochia sancti Egidii in campis, in com' Mid' immediatè post reception' hujus brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus dominus custos magni sigil' nostri Angl' de eo ad tunc ibidem cons' in hac parte & habeatis seu aliquis vel unus vestrum habeat ibi hoc breve. Teste meipsa apud Westm' sexto die Martii Anno regni nostri tertio.

The Label.

Samuel' Powel Ar' servien' ad arma, &c. H. corp' pro Mountague Ar' R. immediatè.

Endorsed, *Per statutem tricesim' prim' Caroli secundi Regis.*

N. Wright, C. S.

Anno 3 Ann. 1704.

The Serjeant alſo acquainted the Houſe, that he heard there was another *Habeas Corpus* granted for Mr. Denton, in his Cuſtody alſo.

While the matter (upon Occaſion of the ſaid forementioned Writ) was debating, the Serjeant acquainted the Houſe, that the other Writ of *Habeas Corpus*, was juſt ſerved upon his Deputy, who had Mr. Denton in his Cuſtody: And he alſo delivered the ſame in at the Clerk's Table, where it was read and was the ſame, *mutatis mutandis*, with the former.

And the Precedents of what was done in the Year 167[illegible] were (by order) read: And ſeveral Members mentioned, upon their Memory, what was done in the Year 1680, in the * Caſe of one Mr. Sheridon.

But the Houſe were of Opinion, that any Perſon committed by the Houſe of Commons was not bailable, within the Act of *Habeas Corpus* of 31 Car. II. but came not then to any Reſolution.

The ſame day Mr. Bromley reported, from the Committee appointed to draw up what is proper to be offered to the Lords at the next Conference, that they had drawn up the ſame accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and (with ſome Amendments) agreed unto by the Houſe. And the ſame is as follows, *viz.*

Reaſons of the Commons to be offered at a ſecond Conference.

'The Commons have deſired this Conference with your Lordſhips, in order to preſerve that good Correſpondence between the two Houſes, which the Houſe of Commons ſhall always ſincerely endeavour to maintain, and which is ſo particularly neceſſary at this time of common Danger, that the Commons would not engage in any thing that looks like a Diſpute with your Lordſhips, were it notfor the neceſſity of vindicating, from a manifeſt Invaſion, the Privileges of all the Commons of England, (with which the Houſe of Commons is entruſted) even thoſe Privileges which are eſſential not only to the well being, but to the very being of an Houſe of Commons, and the preventing of the ill Conſequences of thoſe miſunderſtandings, which, if they are not ſpeedily removed, muſt otherwiſe interrupt the happy Concluſion of this Seſſion, and the Proceediugs of all future Parliaments.

It was this Conſideration alone has ſo long prevailed with the Houſe of Commons, not to inſiſt on due Reparation for thoſe violent and unparliamentary Attempts, made by your Lordſhips upon their Rights and Privileges, at the end of the laſt Seſſion of Parliament, but to apply themſelves to the giving the ſpeedieſt Diſpatch, to thoſe Supplies which his Majeſty ſo earneſtly recommended from the Throne, which

* *Vid. Tome* II. *p.* 60.

are ſo neceſſary to enable her Majeſty to purſue the Advantages that have been obtained againſt the common Enemy, by the great and glorious Succeſs of her Majeſty's Arms: And which are now delayed in your Lordſhips Houſe, in ſo unuſual a manner. Anno 3 Ann. 1704.

'The Commons do agree to your Lordſhips, that when either Houſe of Parliament have apprehended the Proceedings of the other to be liable to Exception, the ancient parliamentary Method has often been to ask a Conference; becauſe it ought to be ſuppoſed, that when the Matters are fairly laid open and debated, that which may have been amiſs will be rectified, or elſe the Houſe that made Objections will be ſatisfied that their Complaints was not well grounded. But your Lordſhips ſeem ſo little to deſire to have Matters fairly laid open and debated, that, to the great Surpriſe of the Commons, when your Lordſhips have invited them to a Conference, about ſome antient fundamental Liberties of the Kingdom, they found only the antient and fundamental Rights of the Houſe of Commons, and their Proceedings, cenſured, and treated in a manner unknown to former Parliaments; and that your Lordſhips had anticipated all Debates, by delivering poſitive Reſolutions; and theſe Proceedings of your Lordſhips, grounded only upon the Petitions of Criminals, that had fallen under the juſt Cenſure and Diſpleaſure of the Commons, and upon a printed Paper, which was not regularly before your Lordſhips.

Tho' this manner of Proceeding, as well as the Matters of your Lordſhips Reſolutions, might have juſtified the Houſe of Commons in refuſing to continue Conferences with your Lordſhips, as their Predeceſſors have done upon leſs Occaſions; and tho' the Commons cannot ſubmit their Privileges to be determined or examined by your Lordſhips, upon any Pretence whatſoever; yet, that nothing may be wanting on their Part to induce your Lordſhips to retract theſe Reſolutions, they proceed to take them into their Conſideration.

'Your Lordſhips firſt Reſolution is, *viz.* That neither Houſe of Parliament hath any Power, by any Vote or Declaration, to create to themſelves any new Privilege that is not warranted by the known Laws and Cuſtoms of Parliament.

'As the Commons have guided themſelves by this Rule, in aſſerting their Privileges, ſo they wiſh your Lordſhips had obſerved it in all your Proceedings. This had entirely taken away all Colour for Diſputes between her Majeſty's two Houſes of Parliament, and many juſt Occaſions of Complaint from thoſe the Commons repreſent. This would effectually put an end to that Encroachment in Judicature, ſo lately aſſumed by your Lordſhips, and ſo often complained of by the

Anno 3 Ann. 1704.

Commons; we mean the hearing of Appeals from Courts of Equity, in your Lordſhips Houſe. This would have hindred the bringing of original Cauſes before your Lordſhips, and your * unwarrantable Proceedings upon the Petition of Thomas Lord Wharton, complaining of an Order of the Court of Exchequer, bearing date the 15th of July, 1701. for filling the Record of a Survey of the Honour of Richmond and Lordſhip of Middleham in the County of York; an Attempt which (contrary to the antient, legal Judicature of Parliament heretofore exerciſed, for the Relief of the Subject oppreſſed by the Power of the great Men of the Realm) was, in favour of one of your own Body, to ſuppreſs a public Record, which all her Majeſty's Subjects had an undoubted Right to make uſe of; an Attempt that tends to render all Fines and Recoveries, and other Records (upon which Eſtates and Titles depend) precarious; and conſequently ſubjects the Rights and Properties of all the Commons of England to an illegal and arbitrary Power.

'A due Regard to the ſame Rule, would have prevented your Lordſhips entertaining the Petitions mentioned at the laſt Conference, which ſet forth,

'That the Lords having given Judgment in the Caſe of Aſhby and White, *viz.* That, by the known Laws of this Kingdom, every Freeholder, or other Perſon, having a Right to give his Vote at the Elections of Members to ſerve in Parliament, and being wilfully denied or hindered ſo to do, by the Officer who ought to receive the ſame, may maintain an Action in the Queen's Courts, againſt ſuch Officer, to aſſert his Right and recover Damages for the Injury: The Petitioners thereupon brought the like Actions in their own Caſes.

'Whereby an extrajudicial Vote of your Lordſhips is ſtated as a Judgment of Parliament, and ſtanding Law in that Caſe, your Lordſhips having no Foundation for the entertaining ſuch Petitions, unleſs, that, after having aſſumed to yourſelves the hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordſhips from the Proceedings of the Commons, who are not accountable to your Lordſhips for them.

'Your Lordſhips ſecond Reſolution is, That every Freeman of England, who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law: And that the commencing and proſecuting an Action at Common-Law, againſt any Perſon (not entitled to Privilege of Parliament) is no Breach of the Privilege of Parliament.

'To which the Commons ſay that every Freeman, and every Subject of England, has a Right to ſeek Redreſs for an Injury; but then ſuch Perſon muſt apply for that Redreſs to

* *Vid.* 303.

to the proper Court, which hath, by antient Laws and Uſage, the Cognizance of ſuch Matters: For, ſhould your Lordſhips Reſolution be taken as an univerſal Propoſition, all Diſtinction of the ſeveral Courts, *viz.* Common-Law, Equity, Eccleſiaſtical, Admiralty, and other Courts, will be deſtroyed; and, in this Confuſion of Juriſdiction, the high Court of Parliament is involved in your Lordſhips Reſolution. Anno 3 Ann. 1704.

'However, the Commons conceive it no wonder your Lordſhips ſhould favour the univerſal Propoſition, that all Rights whatſoever are to be redreſſed by Actions at Law, when your Lordſhips pretend to have the laſt Reſort in Caſes of Judicature by Writs of Error; ſo that your Lordſhips are, in this, only extending your own Judicature, under the Colour of a Regard and Tenderneſs for the Rights of the People, and Liberties of their Perſons.

'The Commons are ſurprized to find your Lordſhips aſſert, that the commencing and proſecuting an Action againſt a Perſon, not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament, ſince it is moſt certain, that to commence and proſecute an Action which would bring any Matter or Cauſe ſolely cognizable in Parliament, to the Examination and Determination of any other Court, is more deſtructive to the Privileges of Parliament, than to commence and proſecute an Action againſt a Perſon only who is entitled to ſuch Privilege.

'That ſome Matters and Cauſes are ſolely cognizable in Parliament, hath ever been allowed by the ſage Judges of Law, and is evident from many Precedents; and to bring ſuch Cauſes to the Determination of other Courts, ſtrikes at the very Foundation of all Parliamentary Juriſdiction, which is the only Baſis and Support, even of that perſonal Privilege to which the Members of either Houſe of Parliament are entitled; and conſequently to commence and proſecute any Action, whereby to draw ſuch Cauſes to the Examination of any other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, againſt whom ſuch Action is brought, is entitled to the Privilege of Parliament, or not, which, beſides the Nature and Reaſon of the thing, is fully evident from the conſtant Uſage of each Houſe of Parliament, in committing for Contempts only againſt their reſpective Bodies, as appears from many Precedents upon the Journals of both Houſes.

'Your Lordſhips third Reſolution is this, *viz.* That the Houſe of Commons, in committing to Newgate, Daniel Horne, Henry Baſſe, and John Paton, junior, John Paty, and John Oviat, for commencing and proſecuting an Action at Common-Law againſt the Conſtables of Ayleſbury, for not allowing their Votes in Election of Members to ſerve in Par-

Anno 3 Ann. 1704.

Parliament, upon Pretence, that their ſo doing was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe, have aſſumed to themſelves alone a legiſlative Authority, by pretending to attribute the Force of a Law to their Declaration: have claimed a Juriſdiction not warranted by the Conſtitution, and have aſſumed a new Privilege, to which they can ſhew no Title, by the Laws and Cuſtoms of Parliament; and have thereby, as far as in them lies, ſubjected the Rights of Engliſhmen, and the Freedom of their Perſons, to the arbitrary Votes of the Houſe of Commons.

'In anſwer to which, the Commons affirm, that the ſaid Commitment is juſtified by ancient Precedents, and by the Uſage and Cuſtoms of Parliament, which is the Law of Parliament, and the Rule by which either Houſe ought to govern their Proceedings; and that the terms of aſſuming to themſelves alone a legiſlative Authority, of attributing the Force of Law to their Declaration, of claiming a Juriſdiction not warranted by the Conſtitution, of aſſuming a new Privilege, to which they can ſhew no Title by the Law and Cuſtom of Parliament; and of arbitrary Votes; are more applicable to this Reſolution of your Lordſhips, which hath no one Precedent to juſtify it.

'According to the known Laws and Uſage of Parliament, it is the ſole Right of the Commons of England, in Parliament aſſembled, (except in caſes otherwiſe provided for by Act of Parliament,) to examine and determine all Matters relating to the Right of Election of their own Members.

'And, according to the known Laws and Uſage of Parliament, neither the Qualification of any Elector, nor the Right of any Perſon elected, is cognizable, or determinable elſewhere, than before the Commons of England in Parliament aſſembled, excepting ſuch caſes as are eſpecially provided for by Act of Parliament.

'And were it otherwiſe, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be expoſed to multiplicity of Actions, vexatious Suits, and unſupportable Expences; and ſuch Officers would be ſubjected to different and independant Juriſdictions, and inconſiſtent Determinations, in the ſame Caſe, without Relief.

'And the Exerciſe of this Power by the Houſe of Commons, is warranted by a long, unconteſted Poſſeſſion, and confirmed by the Act that paſſed 7 & 8 *Guil.* III. cap. ; and the Houſe of Commons muſt be owned to be the only Juriſdiction that can allow the Elector his Vote, and ſettle and eſtabliſh the Right of it; the laſt Determination in that Houſe being, by the Act of Parliament, declared to be the ſtand-

ſtanding Rule for the Right of Election in each reſpective Place. Nor can any Elector ſuffer either Injury, or Damage, by the Officers denying his Vote; for when the Elector hath named the Perſon he would have to repreſent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in queſtion in the Houſe of Commons, whether the Officer had any regard to it or no. Anno 3 Ann. 1704.

In the Beginning of the Parliament held 28 Eliz. Mr. Speaker acquaints the Houſe, that he had received, by the Lord Chancellor, her Majeſty's Pleaſure; that ſhe was ſorry the Houſe was troubled with the Matter of determining the chuſing and returning of Knights for the County of Norfolk; that it was improper for the Houſe to meddle in it, which was proper for the Lord Chancellor, whence the Writs iſſued out, and whither they were returnable? That her Majeſty had appointed the Lord Chancellor to confer therein with the Judges; and upon examining the ſame, to ſet down ſuch Courſe as to Juſtice and Right ſhould appertain."

Nov. 9. A Committee was appointed to examine and ſtate the Circumſtances of the Return of the Knights for the County of Norfolk.

And on the Friday, Nov. 11. Mr. Cromwell reports the Caſe of the Norfolk Election very largely, in which Report are theſe Reſolutions.

1. That the ſaid Writ really was executed.

2. That it was a pernicious Precedent that a new Writ ſhould iſſue without the Order of this Houſe.

3. That the diſcuſſing, or judging of this, and ſuch like Differences only belonged to the ſaid Houſe.

4. That tho' the Lord Chancellor and Judges are competent Judges in their Courts, they are not ſo in Parliament

5. That it ſhould be enter'd in the Journal-Book of the Houſe, that the firſt Election is good; and that the Knights then choſen were received and allowed as Members of the Houſe; not out of any reſpect the Houſe had, or gave to the Lord Chancellor's Judgment therein paſſed, but merely by reaſon of the Reſolution of the Houſe itſelf, by which the ſaid Election had been approved.

6. That there ſhould be no Meſſage ſent to the Lord Chancellor, not ſo much as to let him know what was done therein, becauſe it was derogatory to the Power and Privilege of the ſaid Houſe.

It alſo appears, that Sir Edmund Anderſon, Lord Chief Juſtice of the Common-Pleas, was acquainted, that the Explanation and ordering of the Cauſe appertained only to the Cenſure of the Houſe of Commons, not the Lord Chancellor and the Judges; and that they ſhould take no notice of their having done any thing in it.

Ac-

Anno 3 Ann. 1704.

Accordingly Mr. Farmer and Mr. Greſham were received into the Houſe, and took the Oaths; being admitted only upon the Cenſure of the Houſe, not as allowed by the Lord Chancellor, or the Judges; and ſo ordered to be ſet down and entered by the Clerk.

And this Right of the Commons to determine their own Elections, has never been diſputed ſince the Caſe of Sir Francis Goodwin, 1 Jac. I. when the Lords would have enquired into the Proceedings of the Houſe of Commons upon his Election; but the Commons then told their Lordſhips, it did not ſtand with the Honour of the Houſe to give account to their Lordſhips of any of their Proceedings or Doings.

And in the Reaſons of their Proceedings in that Caſe, which they laid by Petition before the King, among other things, they ſay, they are a Part of the Body to make new Laws; yet, for any Matter or Privileges of their Houſe, they are and ever have been a Court of themſelves, of ſufficient Power to diſcern and determine without the Lords, as the Lords have always uſed to do theirs without them.

In which Reaſons, as well as in their Apology afterwards to that Prince, the Houſe of Commons did, above a hundred Years ſince, ſo clearly, and with ſo much Strength of Reaſon, aſſert their Right in the Matter of the Election of their Members. The Commons think it their Duty to reſiſt all Attempts whatſoever to invade them.

And upon this Occaſion, it may not be Improper to cite the Opinion the Houſe of Commons had of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforeſaid Apology, in theſe Words, *viz.*

Neither thought we that the Judges Opinions, (which yet, in due place, we greatly reverence, being delivered with the Commmon Law,) which extend only to inferior and ſtanding Courts, ought to bring any Prejudice to this high Court of Parliament; whoſe Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themſelves.

When the Earl of Shaftsbury was Lord Chancellor, Writs were iſſued, during a Prorogation of Parliament, for electing Members in the room of thoſe that were dead: The King himſelf was ſo cautious, as to the Regularity of this Proceeding, and had ſo much Regard to the Privileges of the Houſe of Commons, that at the next Seſſion of Parliament, Feb. 5, 1672, he ſpoke to the Commons, from the Throne, in theſe Words.

'One thing I forgot to mention, which happened during this Prorogation; I did give orders for the iſſuing ſome Writs, for the Election of Members inſtead of thoſe that are dead, that the Houſe might be full at their Meeting: And I am

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m miſtaken, if this be not according to former Precedents. But I deſire you will not fall to other Buſineſs 'till you have examined that Particular; and I doubt not but Precedents will juſtify what is done; I am as careful of all your Privileges as of my own Prerogative.'

Feb. 6, 1672. The Houſe of Commons took that Matter into Conſideration; and ſeveral Precedents being cited, and the Matter at large debated, and the general Senſe and Opinion of the Houſe being, 'That, during the Continuance of the High Court of Parliament, the Right and Power of iſſuing Writs for electing Members to ſerve in this Houſe, in ſuch Places as are vacant, is in this Houſe, who are the proper Judges alſo of Elections, and Returns of their Members.

Thereupon it was Reſolved, That all Elections upon the Writs iſſued ſince the laſt Seſſion are void, and that Mr. Speaker do iſſue out his Warrant to the Clerk of the Crown, to make out new Writs for thoſe Places. Which was done accordingly.

No other Court than the Houſe of Commons, hath ever had the Determination of the Elections, or any Cognizance of ſuch Cauſes, except where by Acts of Parliament directed: and ſuch an Action as that againſt the late Conſtables of Aylesbury, to bring the Right of voting in an Election, in queſtion in the Courts of Law, is a new Invention never heard of before; which (as new Devices in the Law are generally attended with Inconveniences and Abſurdities) was plainly to ſubject the Elections of all the Members of the Houſe of Commons to the Determination of other Courts.

This undoubted Privilege and Juriſdiction, the Commons think will warrant theſe Commitments, if the late Declaration, (which is agreeable to, and cannot leſſen their antient Right,) had never been made.

For it is the antient and undoubted Right of the Houſe of Commons to commit for Breach of Privilege: And Inſtances of their committing Perſons, not Members of the Houſe, for Breach of Privilege, and that to any of her Majeſty's Priſons, are antient, ſo many and ſo well known to your Lordſhips, that the Commons think it needleſs to produce them.

And it being the Privilege of the Houſe of Commons, to have the ſole Examination and Determination of all Cauſes relating to their Elections, as aforeſaid:

It follows, that any Attempt to draw any ſuch Cauſes to the Determination of any other Court, is a Breach of the Privilege of the Houſe of Commons; for which the Perſon offending may be committed by the Commons.

And here we cannot but take notice of that unreaſonable, as well as unnatural Inſinuation, whereby your Lordſhips

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endeavour to ſeparate the Intereſt of the People from their Repreſentatives in Parliament, who pretend to no Privileges, but upon their Account, and for their Benefit; and are ſorry to ſay, they are thus ſeverely reflected on by your Lordſhips, for no other reaſon, but for their interpoſing to preſerve the Rights of the People, and their Liberties, from your Lordſhips arbitrary Determinations.

Your Lordſhips fourth Reſolution is, 'That every Engliſhman, who is impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due courſe of Law.'

The Commons do not deny that every Engliſhman, who is impriſoned, by any Authority whatſoever, has an undoubted Right to apply, by his Agents, or Friends, in order to procure his Liberty by due courſe of Law, provided ſuch Application be made to the proper Place, and in a proper Manner; as, upon the Commitments of the Houſe of Commons, (which ſometimes are not, as other Commitments, in order to bring to Trial; but are, in Caſes of Breach of Privilege and Contempt, the proper Puniſhment of the Houſe of Commons,) the Application ought to be to that Houſe.

The Commons are ſo willing to allow and encourage every Engliſhman to apply, by his Friends, or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due courſe of Law, that they have not cenſured any Perſon merely for applying for ſuch Writ of *Habeas Corpus*, even in Caſes where by due Proceſs of Law the Priſoners cannot be diſcharged. For the Commons muſt obſerve, that, in many Caſes, a Priſoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty; as in Caſes of Commitment in Execution, or for Contempt to any Court of Record, or by virtue of meſne Proceſs, or the like: And in the Act of *Habeas Corpus*, ſeveral Caſes are expreſly excepted; and that no Perſon, committed for any Contempt, or Breach of the Privilege, by the Houſe of Commons, can be diſcharged upon a Writ of *Habeas Corpus*, or by any other Authority, than that of the Houſe, during that Seſſion of Parliament, is plain from the following Precedents.

May 23. 1 Jac I. Order'd, Jones, the Priſoner, to be ſent for hither, and to attend his Diſcharge from the Houſe.

That the Priſoner committed by us, cannot be taken from us, and committed by any other.

In May 1675, the Houſe of Commons having reſolved, That there lay no Appeal to the Judicature of the Lords, from Courts of Equity; and that no Member of the Houſe ſhould proſecute any Appeal from any Court of Equity, before the Houſe of Lords; *Serjeant Pemberton, Serjeant Peck, Sir

* *Vid. Tom. I. p.* 223.

Sir John Churchill, and Charles Porter, Esq; were committed to the Custody of the Serjeant of the House, for a Breach of Privilege, in having been of Council at the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. Dalmahoy, a Member of the House of Commons, was concerned. Anno 3 Ann. 1704.

But the Serjeant having been by Force prevented from keeping them in Custody, the Commons did, the 4th of June 1675, acquaint the Lords, at a Conference, as followeth, *viz.*

We are further commanded to acquaint you, that the Enlargement of the Persons imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black-Rod; and the Prohibition, with Threats, to all Officers, and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons. And they have therefore caused them to be retaken into the Custody of the Serjeant at Arms, and have committed them to the Tower.

The said Council were afterwards committed to the Tower for a Breach of Privilege, and Contempt of the Authority of the House: And the House being informed, that the Lords had ordered Writs of *Habeas Corpus* for bringing the Council to the Bar of their House.

The Commons then passed the following Resolutions.

June 7. *Resolved, Nemine Contradicente*, That no Person, committed for Breach of Privilege by Order of this House, ought to be discharged, during the Session of Parliament, but by Order, or Warrant of this House.

Resolved, Nemine Contradicente, That the Lieutenant of the Tower, in receiving and detaining in Custody Sir John Churchill, Serjeant Peck, Serjeant Pemberton, and Mr. Porter, performed his Duty according to Law; and, for so doing, he shall have the Assistance and Protection of this House.

Resolved, Nemine Contradicente, That the Lieutenant of the Tower, in case he hath received, or shall receive any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

Ordered, That these Resolutions be immediately sent to the Lieutenant of the Tower.

Afterwards the Lieutenant of the Tower gave the House an Account, that he had refused to deliver the Council, upon the Lords Order, signified to him by the Black-Rod, because they were committed by this House; and that after he had received the Votes of this House, he had Writs of *Habeas*

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Corpus brought him, to bring the Council to the Houſe of Lords at Ten o'Clock the next Morning, and humbly craved the Direction of the Houſe what to do.

Mr. Speaker intimated to him, he ſhould forbear to return the Writs.

And the Houſe came to ſeveral other Reſolutions.

June 9. *Reſolved, Nemine Contradicente*, That no Commoner of England, committed by Order or Warrant of the Houſe of Commons, for Breach of Privilege, or Contempt of that Houſe, ought, without Order of that Houſe, to be, by any Writ of *Habeas Corpus*, or other Authority whatſoever, made to appear, and anſwer, and do, and receive a Determination in the Houſe of Peers, during the Seſſion of Parliament wherein ſuch Perſon was committed.

Reſolved, Nemine Contradicente, That the Order of the Houſe of Peers, for the iſſuing out of Writs of *Habeas Corpus* concerning Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, is inſufficient and illegal; for that it is general, and expreſſes no particular Cauſe of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the ſaid Houſe of Peers.

Reſolved, Nemine Contradicente, That the Lord-keeper be acquainted with theſe Reſolutions, to the end that the ſaid Writ of *Habeas Corpus*, may be ſuperſeded, as contrary to the Law and the Privileges of this Houſe.

Reſolved, Nemine Contradicente, That a Meſſage be ſent to the Lords, to acquaint them, that Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, were committed by Order and Warrant of this Houſe, for Breach of the Privilege, and Contempt of the Authority of this Houſe.

March 22. 1697. Charles Duncomb, Eſq; having been comted by Order of this Houſe, and afterwards diſcharged by Order of the Houſe of Lords, without the Conſent of this Houſe.

Reſolved, That no Perſon committed by this Houſe can, during the ſame Seſſion, be diſcharged by any other Authority whatſoever.

Reſolved, That the ſaid Charles Duncomb be taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Theſe are ſome Inſtances, among many others, that might be produced upon this Occaſion; and the laſt cannot but be particularly remembered by ſome noble Lords that then ſate in the Houſe of Commons, and ſtrenuouſly aſſerted this Privilege of the Commons.

Your Lordſhips fifth Reſolution, *viz. Reſolved*, 'That for the Houſe of Commons to cenſure or puniſh any Perſon for aſſiſting a Priſoner to procure a Writ of *Habeas Corpus*, or by

Vote,

Vote, or otherwiſe, to deter Men from ſolliciting, proſecuting, and pleading upon ſuch Writ of *Habeas Corpus*, in behalf of ſuch Priſoner, is an Attempt of dangerous Conſequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the neceſſary Aſſiſtance to the Priſoner, upon a Commitment of the Houſe of Commons, which has ever been allowed upon all Commitments by any Authority whatſoever.' Anno 3 Ann. 1704.

The Commons take this to be another Inſtance of your Lordſhips Breach of your own Rule, your Lordſhips being no Judges of their Privileges; tho' by this Reſolution you ſeem to make a Judgment without having heard, and knowing what the Commons have to alledge for them.

This Attempt, therefore of your Lordſhips is of dangerous Conſequence, tending to a Breach of the good Underſtanding between the two Houſes, and of moſt pernicious Example. The Commons late Proceeding, in cenſuring and puniſhing the Council that have pleaded upon the Return of the Writs of *Habeas Corpus*, in behalf of the Priſoners, if duly conſider'd, is a great Inſtance of the Temper of the Houſe of Commons: For this Houſe did not interpoſe when the Priſoners applied to the Lord-keeper, and the Judges to be bailed; and, had the Lawyers ſhewn ſo much Modeſty, as to have acquieſced in the Opinion of the Lord-keeper, and all the Judges, that theſe Priſoners were not bailable by the Statute of *Habeas Corpus*, the Commons had never taken any notice of it: But they would not reſt ſatisfied without bringing on again this Caſe; and the Privileges of the Commons were, with great Licentiouſneſs of Speech, denied, and inſulted in public Court; not with any hope or proſpect of Relief of the Priſoners, (who in this whole Proceeding have apparently been only the Tools of ſome ill-deſigning Perſons, that are contriving every way to diſturb the Freedom of the Commons Elections) but in order to vent theſe new Doctrines againſt the Commons of England, and with a Deſign to overthrow their fundamental Right. And, after ſo much Inveteracy ſhewn to the Commons, they could do no leſs than declare the Abettors, Promoters, Countenancers, or Aſſiſters, of a Proſecution ſo carried on, to be guilty of conſpiring to make a Difference between the two Houſes of Parliament, to be Diſturbers of the Peace of the Kingdom; and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament aſſembled.

And the Commons, in committing the Lawyers, have only done that Right to their Body which your Lordſhips have frequently practiſed, in Caſes of perſonal Privilege, where any ſingle Member of your Lordſhips Houſe is concerned.

Your Lordſhips laſt Reſolution, *viz.* 'That a Writ of Error

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ror is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for; (tho' at the Requeſt of either Houſe of Parliament) the Denial thereof being an Obſtruction of Juſtice, contrary to *Magna Charta*.

The Commons ſhall not enter into any Conſideration, whether a Writ of Error is of Right, or of Grace; they conceiving it not material in this Caſe, in which no Writ of Error lies, nor was ever any Writ of Error brought or attempted in the like Caſe before; and the allowing it in ſuch Caſes would not only ſubject all the Privileges of the Houſe of Commons, but the Liberties of all the People of England, to the Will and Pleaſure of the Houſe of Lords.

And, when your Lordſhips' Exerciſe of Judicature upon Writs of Error is conſidered, how unaccountable is it in its Foundation; how inconſiſtent is it with our Conſtitution, which, in all other Reſpects, is the wiſeſt and happieſt in the World, to ſuppoſe the laſt Reſort in Judicature, and the Legiſlative to be differently placed?

And, when it is conſidered how that Uſurpation, in hearing of Appeals from Courts of Equity, ſo eaſily traced, tho' often denied and proteſted againſt, is ſtill exerciſed, and almoſt every Seſſion of Parliament extended, it is not to be wondered, that, after the Succeſs your Lordſhips have had in thoſe great Advances upon our Conſtitution, you ſhould now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Repreſentatives to your Determination; for that is a neceſſary Conſequence, from your Lordſhips encouraging the late Actions, and your countenancing a Writ of Error; which, if allowed upon ſuch a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magiſtrates of Juſtice: And, tho' the preſent Inſtance has been brought on under the ſpecious Pretence of preſerving Liberty, it is obvious the ſame will as well hold to controul the bailing and diſcharging Priſoners in all Caſes.

And the Commons cannot but ſee how your Lordſhips are contriving, by all Methods, to bring the Determination of Liberty and Property, into the bottomleſs and inſatiable Gulph of your Lordſhips Judicature, which would ſwallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordſhips muſt give the Commons leave to ſay, they have the greater reaſon to dread, when they conſider in what manner it has been exerciſed: The Inſtances whereof they forbear, becauſe they hope your Lordſhips will reform; and they deſire rather to compoſe the old, than to create any new Differences.

Upon the whole, the Commons hope, that, upon due Conſideration of what they have laid before your Lordſhips, you will

will be fully ſatisfied they have acted nothing in all theſe Proceedings, but what they are ſufficiently juſtified in from Precedents, and the known Laws and Cuſtoms of Parliament; and that your Lordſhips have aſſumed and exerciſed Judicature contrary to the known Laws and Cuſtoms of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of England. Anno 3 Anne. 1704.

The next Day the ſaid Report was left with the Lords at a Conference; after which the Lords deſired a free Conference, which was agreed to.

The Serjeant at Arms, attending the Houſe, having acquainted the Houſe, that he had received two Writs of *Habeas Corpus* under the Great Seal of England, to bring before the Lord-keeper the Bodies of James Mountague, Eſq; and Alexander Denton, Eſq; (who are committed to his Cuſtody by Warrants from the Speaker of this Houſe for a Breach of Privilege.)

The Houſe again aſſumed the Conſideration of that Matter: And after Debate,

Reſolved, That no Commoner of England, committed by the Houſe of Commons for Breach of Privilege, or Contempt of that Houſe, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature, during that Seſſion of Parliament wherein ſuch Perſon was ſo committed.

Reſolved, That the Serjeant at Arms attending this Houſe, do make no Return of, or yield any Obedience to the ſaid Writs of *Habeas Corpus*; and, for ſuch his Refuſal, that he have the Protection of the Houſe of Commons.

Reſolved, That the Lord-keeper be acquainted with the ſaid Reſolutions, to the end, that the ſaid Writs of *Habeas Corpus* may be ſuperſeded, as contrary to Law, and the Privileges of this Houſe.

Ordered, That the Clerk of this Houſe do acquaint the Lord-keeper of the Great Seal of England with the ſaid Reſolutions.

The 13th, the Report of what paſs'd at the free Conference was delivered by Mr. Bromley, as follows:

That the Lords who appeared as Managers, and ſpoke at this free Conference, were, the Earl of Sunderland, the Lord Ferrers, the Biſhop of Salisbury, the Lord Hallifax, the Lord Wharton, and the Duke of Devonſhire Lord Steward. Free Conference.

That the free Conference was begun by the Managers for the Lords, who ſaid, this Conference was deſired to maintain a good Correſpondence between the two Houſes, which was never more neceſſary than at this Time.

That the delivering Reſolutions at their firſt Conference was parliamentary; and inſtanced the Reſolutions 3 Car. I. which produced the Petition of Right. That

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That the Lords look upon the Commons to be a great Part of the Conſtitution, which cannot be preſerved but by doing right to both Houſes.

That every Part of the Body politic, as well as the Body natural, ought to be kept within due Bounds; an Exceſs in any Member will weaken the whole.

That this Conſtitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty and Property: And the Houſe of Commons hath been a great Fence and Bulwark of Liberty.

That the Lords Reſolutions are very well founded, and juſtified by the Laws of the Land, as is their Judicature in this Caſe.

That it was proper for them to receive the Petitions, and make theſe Reſolutions thereupon.

That the Lords are the great Court of Judicature; and when the Courts below have differed in Opinion, there has been Reſort to the Lords for their Judgment, as in the Caſe of Kindred of half-blood claiming Shares of Inteſtates Eſtates.

That when ſuch a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their preſent Reſolutions.

1. That the firſt Reſolution was, in effect, agreed to by the Commons, tho' they go off to foreign Matters, of which the Lords take no notice.

That the Law of the Land can be altered only by the Legiſlature.

2. That the ſecond Reſolution aſſerts the Subjects Redreſs by Action at Law, &c.

That all Conſtitutions have reckoned this their Safety; that every Man, from the higheſt to the loweſt, hath the Protection of the Law.

That, according to our Conſtitution, the Subject ma[illegible] onteſt his Right with the Crown, and upon equal Term[illegible]ith that Reſpect which is due.

That this Reſolution only aſſerts the Right, does [illegible]ate the reſpective Courts, where the Redreſs is to be had: If the Party miſtakes the Court, he is puniſhed by Coſts of Suit.

The Term of privileged Cauſes is new, and the Diſtinction unknown.

3. To ſupport the ſaid Reſolution, it was urged, That the Breach of Privilege was not well grounded.

That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was murdered, they came to Declarations.

That a Law, without Promulgation, cannot have Force to make an Offence.

The Liberty of Men's Perſons is the greateſt Privilege, and

and not to be taken away, but in known Caſes; the invading of it has ſhook the beſt Conſtitutions. Anno 3 Ann. 1704.

'That the taking away the Liberty of one mean Perſon, once endangered the Government of Rome.

'That both Houſes may commit for Breach of Privilege, but cannot declare any thing to be a Privilege, without good Grounds, nor conſequently make any thing a Contempt, that is not known to be ſo.

'That Commitments, or Cenſures, have not been uſual upon Actions at Law, tho' ſuch Actions have brought the Proceedings or Privileges of either Houſe in queſtion.

'That, in the Caſe of Freedom of Speech, which is the greateſt Privilege, there was a Judgment in King Charles the Firſt's Reign, in the Heat of thoſe Times, againſt ſome Members, for Speeches in Parliament: This the Commons firſt condemned; and then by Conference brought it before the Lords, who came to a Reſolution, that it was erroneous, and deſired the Lord Hollis to bring his Writ of Error; and thereupon it was reverſed by the Lords, in the Time of Charles the Second; which ſhews the Care the Lords had of the Commons Privileges.

'That in Soame and Barnardiſton's Caſe, the Commons did not concern themſelves, only in ſupport of the Action, when in 1678, they examined the Judgment of Reverſals as a Grievance.

'That the Lords had not interpoſed in any Suits, which concerned the Proceedings of their Houſe.

'That the Earl of Banbury (as he was called) was, by the Lords, adjudged to be no Peer: This was examined in the King's Bench, where, in Abatement of an Indictment of Murder againſt him, as Charles Knolles, Eſq; he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examined by the Court, and diſallowed.

'That the late Biſhop of St. David's was proſecuted in the Spiritual Court, and deprived, tho' a Member of that Houſe; and the Lords did not interpoſe.

'That it is the Wiſdom of all Governments, to have the Law open; and that's the Difference between a legal and an arbitrary Government.

'That the Lords do not meddle with the Commons Right of determining their own Elections; they have a ſettled Poſſeſſion of it, which is a Right: But if all the Rights of Subjects concerned in thoſe Elections are to be determined there, that will bring all Queſtions of Freehold, and the Allowance of all Charters, and all Liberty and Property before them.

'That a Freeholder of forty Shillings *per annum* has a Right of Inheritance, to which he is born; and if his Vote is de-

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nied, he is damnified, and loſes the Credit of his Vote; and if he ſhall only come to the Houſe of Commons, they can neither give him Damages nor Coſts of Suit.

'That a Freehold cannot be determined by any Court which cannot give an Oath.

'That the Precedents produced concern only the Right of determining Elections in general.

'And an Action by an Elector, for his Right of Voting, does not avoid the Election.

'4. To maintain the fourth Reſolution, they ſaid, That it may be lawful for a Man to apply for his Liberty, when he cannot have it.

'That the Proceedings in 1675, produced as a Precedent in this Caſe, were upon a Matter conteſted between the two Houſes, and reſolved differently in the Lords Houſe: Topham and the Lieutenant of the Tower were both turned out; and the Ferment was ſo high, that the Parliament was prorogued, and ſoon after diſſolved.

'The fifth Reſolution is a Conſequence of the fourth:

'That the Commitment of the Lawyers was not for licentious Speech, as was inſinuated at the laſt Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.

'That 'tis the particular Character of that odious Court called the Inquiſition, that no body dares appear for, or reſort to a Perſon impriſoned there, but he is left to the Mercy of that Court.

'The Lawyers are not to be anſwerable for every thing they argue; they are to do their Duty for their Clients, and the Court is to judge of it.

'6. The Commons declining the laſt Reſolution is an agreeing to it, though not ſo parliamentary as it would have been to have agreed to it directly.

'That the Lords are the only proper Judges, whether the Writ of Error lies before them.'

To theſe Arguments the Managers for the Commons anſwered:

'That they agreed the neceſſity of a good Correſpondence between the two Houſes, eſpecially at this time of common Danger: and that the Commons had fully ſhewn their Deſire to maintain that good Correſpondence, by condeſcending to meet their Lordſhips at this free Conference, altho' their antient and fundamental Privileges had been called in queſtion, and denied by their Lordſhips, and that in an extraordinary and very unparliamentary Manner.

'That the delivery of Reſolutions is ſo far from being the only Method of Conferences, that the more uſual Method has been to offer Reaſons, without Reſolutions; and it would be very

very difficult to give any Inſtance (before this) of either House delivering poſitive Reſolutions at a Conference, without the Reaſons, at the ſame time, to ſupport them, and that induce them to make ſuch Reſolutions. Anno 3 Ann. 1704.

'1. That the Commons Anſwer to the Lords firſt Reſolution, is not foreign to the Subject-Matter of the Conference: Becauſe the Commons apprehended the Subject-Matter to be their Lordſhips denying the Privileges of the Commons, on the one hand, and their extending their own Judicature beyond its proper Limits, on the other: And therefore the Commons could not but take notice, how far their Lordſhips had tranſgreſſed in the Exerciſe of an unwarrantable Judicature, in Contradiction to that very Rule they had laid down for the Teſt of the Proceedings of the Commons, and by which the Commons had ſtrictly governed themſelves.

'That tho' the Commons cannot create new Privileges; yet, in Coke's 13 Reports, fo. 63. 'tis ſaid, the Privilege of Parliament, either of the upper Houſe, or of the Houſe of Commons, belongs to the Determination or Deciſion only of the Court of Parliament; for every Court hath a Right to adjudge their own Privileges, according to the Book of Ed. 4. Sir John Paſton's Caſe.

'2. To their Lordſhips Arguments for their ſecond Reſolution your Managers anſwered:

'That every Perſon injured, hath a Right to ſeek Redreſs; but then that Redreſs muſt be ſought in the Place where the Matter is properly cognizable.

'3. To what the Lords offered upon the third Reſolution, your Managers anſwered:

'That Matters of Election do not belong to the Courts below, but only to the Houſe of Commons, which hath been in long Poſſeſſion of them: That there was an Act of Parliament made in the time of King Henry the Sixth, to give an Action for a falſe Return of Members to ſerve in Parliament, becauſe no ſuch Action lay at Common-Law, it relating to Elections.

'That double Returns not being within that Statute, no Action lay in the Courts of Common-Law, for making any double Return, 'till the Statute 7 and 8 William III.

'That, beſides the Inſtances given, in the Anſwers the Commons gave to the Lords Reſolutions, at the laſt Conference, this Diſtinction, as to privileged Caſes, is fully and undeniably warranted by the Statute made in the firſt Year of King William and Queen Mary, entitled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; where, among other Endeavours of the late King James, to ſubvert and extirpate the Laws and Liberties of the Kingdom, theſe are mentioned, by violating the Freedom of Election of Members to ſerve in Parliament,

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and Proſecutions in the Court of King's-Bench, for Matters and Cauſes only cognizable in Parliament.

'Beſides, that there are privileged Caſes as well as privileged Perſons, appears from hence: A Prohibition, and afterwards Attachment, lies, for ſuing in the Spiritual Court for a Temporal Cauſe determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common-Law is but one, as appears in Coke's 1 Inſt. Fo. 2. B. where he mentions *Lex & conſuetudo Parliamenti, & lex communis*, as diſtinct Laws.

'As there are ſeveral Laws, ſo there are ſeveral Courts and Juriſdictions, and ſeveral Cauſes proper for thoſe ſeveral Laws and ſeveral Juriſdictions: Of theſe the high Court of Parliament is the firſt: *Lex & conſuetudo Parliamenti* is a great Branch of the Law of England; and many Cauſes are to be determined only by that Law, as appears in the Inſt. Fo. 25.

'With ſuch Cauſes as are in their nature parliamentary, and to be determined by the Law of Parliament, the Common-Law, and Common-Law Judges have nothing to do; as further appears, 4 Inſt. Fo. 14, 15. where the Expreſſions are very ſuitable to the preſent Controverſies.

'That the Perſons aſſiſting in the Proſecution of ſuch Actions, after a Prohibition by the Commons, for that ſuch Cauſes belong to their Juriſdiction, the committing them for the Breach of their Privileges in that particular, is no more than is done by the Common-Law Courts for a like Contempt, when Perſons will ſue, after a Prohibition, to the Spiritual Courts: And the Commons uſual way to defend their Privileges againſt ſuch invaſions, has been by committing the Tools and Inſtruments thereof.

'It is a fundamental Maxim of the Law and Cuſtom of Parliamement, which is the higheſt and nobleſt Part of the Law of England, and particularly adapted to the Preſervation of the Liberties of this Kingdom, that the two Houſes are independent of one another, and ſole Judges of their Rights and Privileges: That their Lordſhips did admit, the Commons have a Privilege to judge of the Rights of their own Elections, to one Intent, but not to another: But if the Commons have ſuch a Privilege to one Intent, they muſt be Judges of it to all Intents and Purpoſes whatſoever; and, being ſole Judges thereof, their Judgment cannot be legally called in queſtion, either by Writs of *Habeas Corpus*, Writs of Error, or otherwiſe, in any other Court; and conſequently the Proceedings in Weſtminſter-Hall, and in the Houſe of Peers, and the Judgment given there, are all null and void, *& coram non judice.*

'The Commons Commitment for commencing theſe Actions, is no more than what they and their Predeceſſors have in all times practiſed, in Caſes of Breach of Privilege.

Anno 4 Ann. 1704.

'4. In answer to what the Lords had offered upon the fourth Resolution, your Managers insisted, that Application of Friends for the Liberty of any Person imprisoned, ought to be in a proper Place, and in a proper Manner, which in this Case ought to have been only to the House of Commons, and by the Petitions of the Persons they had committed.

'That the Proceedings in 1675, were so well grounded, that they must be Precedents to the Commons to follow at all times upon the like Occasions.

'5. To what the Lords offered upon the fifth Resolution, your Managers answered;

'The Licentiousness of Speech used by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the House of Commons; but they were committed for pleading upon the Returns of the Writs of *Habeas Corpus*, in behalf of the Prisoners committed by the House of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their House.

'6. To the last Resolution your Managers insisted, that no Writ of Error lies in that Case; and that there may be Cases wherein no Writ of Error lies, was their Lordships Opinion in the Case of the late Bishop of St. David's, who brought his Writ of Error upon the Courts not granting him a Prohibition.

'The Case of Sir Thomas Armstrong, mentioned by their Lordships, was particular, in that the Commons then apprehended he was entitled to a Writ of Error, within the meaning of the Statute of Edward the Sixth.

'Your Managers further urged the Novelty of the Action in the Case of Ashby and White, of which no Footsteps can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Cases for four hundred Years past; and the Occasion of such an Action must frequently have happened.

'The Lords themselves (when they had no Design upon the Privileges of the Commons) were of Opinion, in the Case of Sir Samuel Barnardiston, in the first Year of the Reign of King William, that no such Action lay; and there is no Reason can be offered to maintain this Action, but held more strongly in the Case of Sir Samuel Barnardiston, as Damages, Costs, *&c.* And it is an absurd Distinction to say, that in this Case the Right of Election cannot come in question, because the determining of the Right of the Electors doth generally determine the Right of the Elected; and almost all controverted Elections depend upon the Qualifications of the Electors.

'That the Commons had shewn such a Disposition to maintain a good Correspondence with their Lordships, though their

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Lordſhips in the Caſe of Aſhby and White, had, contrary to the Judgment of the Courts below, allowed the Action, upon which the Plaintiff had taken out Execution, and levied the Money; that the Commons took no notice of it, and were willing to let the Matter fall, which might occaſion any Conteſt in this Time of public Danger: But when other Actions of the like Nature were ſtill commenced and proſecuted, whereby all Elections would be brought to the Determination of the Lords, or, at leaſt, in time ſo influenced, as that the Lords would in Effect chuſe the Commons, and thereby the Independency of the two Houſes would be deſtroyed, which is the great Safety of the Conſtitution; then it concerned the Commons, who are the Repreſentatives of the People, to oppoſe what would be ſo fatal to our Conſtitution.

'The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the Lords, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon ſuch Writs of Error.

'Nay, ſuch Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in England, to the arbitrary Diſpoſition of the Houſe of Lords.

'And if a Writ of Error cannot be denied in any Caſe, and the Lords alone are to judge whether the Caſe be proper for a Writ of Error, then all the Queen's Revenue, all her Prerogatives, and all the Lives and Liberties of the People of England, will be in the Hands of the Lords, for every Felon, Burglar, and Traitor, will be entitled to a Writ of Error before the Lords; and they will have even Power of Life and Death.

'And by Writs of Error and Appeals, as already exerciſed, they will have all our Properties; by ſuch new-invented Actions they will have all our Elections; and by ſuch Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, at their Determination; who determine by Vote, with their Doors ſhut, and it is not certainly known who it is that hurts you.

'The Novelty of thoſe things, and the infinite Conſequences of them, is the greateſt Argument in Law, that they are not of Right.

'The Commons are not contending for a ſmall thing, but for their all:

'Eſpecially ſince the Lords have found out a way to diſtreſs the Government, by detaining the Money given by the Commons, which muſt come laſt to them, becauſe the Money-Bills muſt begin with the Commoners; and if by that means they can extort Writs of Error where they never were heard of, the Commons muſt commit the Perſons employed in all ſuch Innovations, or elſe they muſt loſe, by ſuch Contrivances, all that they have. 'In

'In the Caſe of Denzil Holles, Sir John Elliot, &c. in 1667, the Commons declared the Judgment given in 5 Car. I. to be an illegal Judgment, and againſt the Privilege of Parliament; and this they did of themſelves, before they acquainted the Lords therewith. Anno 3 Ann. 1704.

'Afterwards, becauſe it concerned the Lords as well as the Commons, they imparted their Reſolutions, to the Lords, who concurred with the Commons; and the Writ of Error, which was afterwards brought at the Deſire and Inſtance of the Lords, and not at all by the Deſire of the Commons, they reſted upon their own Reſolution, that it was an illegal Judgment.

'The Lords, by way of Reply, ſaid further, that this is a Cauſe of Liberty and Property, and judicial Proceedings, which the Commons had endeavoured to ſtop.

'That the Conference, therefore, asked by the Lords, upon the fundamental Rights and Liberties, was proper.

'That they are the ſame Terms the Commons uſed, 3 Car. when their Liberties were attack'd.

'That the true Method of Conference is not by way of Queſtion and Anſwer, but by Reſolutions; which are not ſo binding, but if the Lords are convinced by Arguments, they may retract them.

'That the Lords, ſure, may regularly take notice of this printed Paper, when it contains ſuch Declaration, as all Perſons are bound to take notice of at the Peril of Commitment.

'That the Right of the Houſe of Commons to determine their own Elections is not in queſtion, or intended to be changed; but the two Precedents produced to ſupport them are very much miſtaken.

'That the Caſe of Sir Francis Goodwin is not fairly ſtated, the word Order being omitted in the Commons Anſwer to the Lords Meſſage, relating to the Commons Proceedings in this Caſe; which refers to a particular Order of the Houſe of Commons, they having before determined that Election. That it is not taken notice that the Lords went with the Commons to the King, and were Mediators; and that, at the laſt, a new Writ iſſued for a new Election.

'That, in the ſtating the Precedent 28 Eliz. the Commons have not taken notice, that the Election was in that Caſe determined by the Judges.

'That the Commons did not confine their Reſolution to Armſtrong's Caſe; But it is general and abſolute, that a Writ of Error in Felony or Treaſon, is of Right and not of Grace.

'That by the Writ of Error brought in the late Biſhop of St. David's Caſe, upon the Denial of a Prohibition, and diſallowed

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diſallowed by the Lords, it appears, when a Record comes improperly before them, they are ſo juſt as to diſmiſs it.

'That, inſtead, of proving the Law, the Conſequences are urged, which is not right arguing.

'That the Queſtion is, whether the Queen is bound to grant a Writ of Error? If ſhe is, it will be hard for any Body of Men to interpoſe with the Crown, and ſtop it, to hinder that Fiat, which, by the Opinion of the Judges, ſhe ought to give.

'She is obliged too, by *Magna Charta*: *Nulli negabimus, nulli deferemus, Juſtitiam.*

'That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as 'tis of any other Court where a Writ of Error is Returnable.

'That the Commons are very ſafe, and may depend the Lords will be as tender of their Privileges as of their own.

'That whatever Privileges accrue to the Commons, will accrue to the Lords alſo: If the Commitments of the Commons are free from the Cognizance of the Courts below, thoſe of the Lords will be ſo too.

'That 3 Car. the Commons maintained, that the Meaſure of Perſons being bailable, is not from the Authority which committed, but from the Cauſe of Commitment.

'Your Managers further obſerved, this Subject-Matter was ſcarce ever in Conference before, between the Lords and Commons, and will ſeem ſtrange to Poſterity.

'That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better fenced, and conſequently their Property too, than that of the Commons.

'The Lords are leſs intereſted in the Event of this Conference than the Commons, who are the Truſtees of thoſe who ſent them, and are bound in Duty and Intereſt to preſerve their Liberty and Property; and having but a triennial Duration, which is at this time near expiring, it is not to be imagined they will infringe what they are entruſted with, and ſo much concerned to maintain; and that ſo notoriouſly, that the Lords ſhould complain, who are much leſs concerned, but more to be feared, as their Deſigns as well as Honour may be hereditary.

'At the firſt Conference, ſix Reſolutions were delivered, as Matters of undoubted Truth and Law.

'And the Proceedings of the Commons are to be tried by theſe Rules, though they were no Parties to the making them.

'1. The firſt is not to be excepted againſt; only is an Inſinuation, as if the Commons had practiſed the contrary, which they are not conſcious of.

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‘ 2. To the ſecond, there are many Injuries for which no Action at Law is allowed; as if a Judge gives a wrong Judgment, the Redreſs by Writ of Error is no Satisfaction for the Damage.

‘ So for other Acts of a Judge, or Court of Juſtice, as denying a Writ of *Habeas Corpus*, or Bail, no Action lies, but upon the late Statute.

‘ That their Lordſhips, not making any Diſtinction between Matters and Cauſes, which were exempt from the Cognizance of the Common-Law Courts, as being ſolely cognizable in Parliament, and Cauſes which were exempt only in Reſpect of the Perſons ſued, being entitled to Privilege of Parliament, ſeems to be the Occaſion of the miſtakes their Lordſhips have entertained, in relation to the Proceedings of the Commons; that the Houſe of Commons is a Court of Judicature in many Reſpects; and, as ſuch, hath, as well as other Courts, Cauſes proper and peculiar to its Juriſdiction.

‘ That the Law-Books, and particularly the Lord Coke, ſpeak of Matters of Parliament which are not to be determined by the Common-Law, but according to the Law and Uſage of Parliament.

‘ That all Matters moved or done in Parliament, muſt be queſtioned and determined there, and not elſewhere, has been heretofore aſſerted by the Houſe of Commons, as their antient and undoubted Right, and has been allowed both by the Judges of Law, and by their Lordſhips. And when the Judges of the King's-Bench, in the fifth Year of King Charles the Firſt, upon an Information againſt Sir John Elliot, Mr. Hollis, and others, held, that Matters done in the Houſe of Commons, if not done in a parliamentary way, might be queſtioned elſewhere; that Judgment was afterwards reverſed in Parliament.

‘ That their Lordſhips allowed all Matters relating to Elections, ought to be determined ſolely by the Commons: And tho' their Lordſhips attempted to make a Diſtinction between the Right of Elections, and the Right of Electors, yet their Lordſhips cannot find room for ſuch a Diſtinction, unleſs they would ſay, the Right and Qualification of the Electors was a Matter not relating to Elections.

‘ That by the Parliament Rolls, 11 Rich. II. it appears a Petition was exhibited by Parliament, and allowed by the King, that the Liberties and Privileges of Parliament ſhould be diſcuſſed by the Parliament, and not by any other Courts, nor by Common or Civil-Law; and, therefore, when the Judges have been aſked their Opinions in Matters of Parliament, they have anſwered, that the Privileges of Parliament ought to be determined there, and not by any other; as they did in the Caſe of Thorp, Speaker of the Houſe of Commons, 31 H. VI.

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'That theſe Matters are not exempt from the Determination of other Courts, in reſpect of the Perſons ſued; for then they might be determined there after the time of Privilege was expired; whereas it is evident, that ſuch Matters and Cauſes cannot be determined, in any other Court than that of the Parliament, after the Expiration of the time of Privilege, any more than before.

'That theſe Matters are determinable in Parliament, although the Perſons proſecuted are not entitled to the Privilege of Parliament, as appears by many Inſtances, particularly by that of the Mayor of Weſtbury, in the eighth Year of Queen Elizabeth, who, for taking four Pounds to get a Perſon elected a Burgeſs for that Borough, was fined and impriſoned by the Houſe of Commons, although he was not a Perſon entitled to the Privilege of Parliament.

'That it may be as well ſaid, that an Action is maintainable for refuſing any of the Lords a Right of precedency in Parliament; yet it cannot be imagined the Houſe of Peers would be content the ſame ſhould be brought in queſtion, in any of the Courts of Law, and decided by a Jury of Commoners.

'But the ſame Arguments will hold for maintaining ſuch an Action, to recover Damage for refuſing Precedency to him that hath Right to it, as for maintaining an Action to recover Damages, for refuſing to take down upon the Poll the Vote of an Elector: For it may with equal Reaſon be ſaid in both Cauſes, that the Plaintiff hath a Right, that the Defendant refuſed him that Right, that ſuch Refuſal is an Injury, and conſequently ought to be repaired in Damages.

'3. As to the third Reſolution, the Commons are not accountable to the Houſe of Lords, or any other Court, for what they did in that Matter.

'Their Privileges being Rights peculiar to that Houſe, what is their Privilege, and the Breach of it, is only examinable, and to be judged by themſelves.

'That the Courts of Weſtminſter-Hall have that Deference for each other's Judgment, that, in Commitments for Contempt or Miſdemeanour, which are frequent every Term, another Court, though ſuperior, will not redreſs the Priſoner by *Habeas Corpus*, or otherwiſe; but he muſt addreſs to the Court which committed him, much leſs can an inferior Court do it.

'The Houſe of Commons therefore expected the ſame Deference from thoſe Courts which they pay each other; and alſo from the Lords Houſe what is due to a co-ordinate Juriſdiction: The Commons taking themſelves to be ſuperior to any Court in Weſtminſter-Hall, and not allowing any Court in this Government to be their ſuperior, no more than their Predeceſſors have done.

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'The Commons do not intend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Perſon to act contrary.

'The Term Declaration is not peculiar to the Prince, but is a familiar Term in Weſtminſter-Hall.

'The Commitment was not for acting contrary to the Vote of the Commons, but for acting contrary to Law, after the Law was notified to them by that Declaration, and they thereby prohibited to proceed in that Courſe.

'To ſet this in a true Light, if a Man ſues in the Admiralty, or eccleſiaſtical Court, for a Matter properly cognizable at Common-Law, the Party ſhall not indeed be committed for commencing that Suit; but if the Defendant in ſuch Suit obtains a Prohibition, which declares what the Law is, and gives the Plaintiff notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will iſſue to arreſt him for Breach of Prohibition, as it is ſaid, though in truth, it is for acting contrary to Law, after he had been admoniſhed what the ſame was.

'Now there's no Difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both admoniſh the Perſon offending, and both command him not to proceed; ſo that there is as much reaſon to complain of a Prohibition at Law, as of the Declaration mentioned in the Reſolution.

'4. To the fourth Reſolution, if it reſpects the Priſoners committed by the Commons, they apprehend the Application ought to be to their Houſe.

'5. For the fifth Reſolution, the Commons, have the ſame Exceptions to it as they had to the third Reſolution: For if Council, Attorneys, or Solicitors, are prohibited, and act contrary to the Order of any Court, they are guilty of a Contempt of that Court, and for ſuch Contempt they may be taken into Cuſtody.

'To their Lordſhips laſt Reſolution, it is very true, that in the laſt Reign the Houſe of Commons did ſo reſolve in the Cauſe of Sir Thomas Armſtrong, as hath been cited, which Caſe was, that Sir Thomas Armſtrong was indicted for High-Treaſon, and afterwards fled beyond Sea, where he was at the time of the Exigent awarded againſt him; and afterwards, within a Year after the Exigent awarded, he was brought Priſoner into England, and would have a Writ of Error, but it was denied him; upon which the Houſe of Commons made the Reſolution mentioned. At the Common-Law, if a Perſon had been guilty of a capital, or any other Crime, and had been in England at the time of the Indictment found againſt him, but was beyond Sea at the time of the Exigent awarded,

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and thereupon an Outlawry was had, the Perſon outlawed might any time afterwards have reverſed that Outlawry, for that Error in Fact; the Practice whereupon was, that Perſons guilty of Treaſon, would fly beyond Sea, and there ſtay till the Witneſſes againſt them were dead, and then return into England, reverſe their Outlawry, and become ſafe. To remedy which Miſchief, was the Statute of Edward VI. made, which takes away the Error in Treaſon, unleſs the Perſon outlawed rendered himſelf to the Chief Juſtice within a Year after the Outlawry: Within which Exception was the Caſe of Sir Thomas Armſtrong, as the Commons apprehended, which was the Reaſon of the Reſolution: And in other Caſes the Practice ſince that Reſolution has been otherwiſe; for in the Caſe of Salisbury, who was attainted of Felony for counterfeiting the Stamps, a Writ of Error was deny'd him, tho' he petitioned for the ſame. But if this Reſolution is aimed at a Writ of Error for denying a *Habeas Corpus*. or denying to bail, or diſcharge Perſons committed by the Houſe of Commons, this Reſolution is very wide from the Purpoſe; for, whether a Writ of Error be a Writ of Right, or a Writ of Grace, in all Caſes where a Writ of Error does lie, yet their Lordſhips Reſolution cannot be carried ſo far as to make a Writ of Error lie, in a Caſe where there is no Judgment pronounced, as there never is in the Caſe of an *Habeas Corpus*, or in any thing relating thereunto: for if a *Habeas Corpus* is denied, or if granted, and the Perſons thereupon denied to be bailed or diſcharged, this is no ſuch Judgment, but that the ſame, or any other Court, may grant an *Habeas Corpus*, and diſcharge or bail the Perſon committed.

'Your Managers added, The Commons hoped it would be no Difficulty to convince the Lords, that theſe Reſolutions were both unreaſonable and unparliamentary, and they have not been much juſtified; and certainly it cannot be parliamentary, or reaſonable, for the Lords to condemn the Commons in the Caſe of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entered into this Debate with their Lordſhips, it was never meant to ſubject their Proceedings to the Lords Examination, but only to ſatisfy the Lords, and all Mankind, that the Commons have not done an extravagant thing. That a noble Lord ſaid, they did not intend to interrupt the Commons in the Determination of their Elections. The Commons are beholden to them for that; for otherwiſe, when they thought fit, they might as well meddle with that, as ſeveral other things they have of late taken upon them.

'The Commons hope their Lordſhips will conſider what the Conſtitution is, and think it not reaſonable, that any

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Part ſhould exceed its due Bounds: But there have been great Invaſions made upon it by their Lordſhips, and ſome Inſtances of that kind have been delivered at the laſt Conference; and it would be eaſy to ſhew, that the Judicature which of late has been aſſumed by the Lords, is not conſiſtent with the Conſtitution. Anno 3 Ann. 1704.

'A Writ of Error in this Caſe, the Commons take to be ſuch: And the Commons would be blameable for admitting of it, ſince no ſuch Writ does lie: and the Commons have done well in adviſing her Majeſty not to grant it, ſince it is againſt the Law: The Commons find no ſuch Writ ever brought.

'Tis ſaid their Lordſhips will do Right to the Commons upon it; but the Commons can never think it reaſonable to truſt the Liberties of the People of England to their Lordſhips Pleaſure, for they that have Power to do Right, have Power to do Wrong; and Power is ſo often abuſed, that the Commons can never ſuffer the Lords to aſſume this new Power to themſelves. Were we certain Power could never be abuſed, an arbitrary, and what is called a tyrannical Power, would be the beſt in the World, for that not being tied to any Rule, would apply the Remedies proper in all Caſes; but ſince this is not to be expected, the Commons were in the right to ſtop this Writ of Error: They find one thing has brought on another; and therefore, for the future, ſhall oppoſe any further Progreſs of this nature.

'It was further urged by the Lords, in Reply, that if ſuch a Writ of Error wants a precedent, 'tis a new ſort of Impriſonment has occaſioned this.

'That the Conſequences urged by Gentlemen cannot avail.

'That if the Law be ſo, nothing but the Legiſlature can alter it.

'That 'tis ſaid, the Lords cannot judge of the Privilege of the Houſe of Commons. They do not ſay they can; there may be no Occaſion; but from Precedents it appears they have done it by Writ of Error, and at the Deſire of the Commons.

'That not only the Lords, but all Mankind will judge of what is not their Privileges, if they claim that which neither Senſe, nor Reaſon, nor Law will juſtify.

'That if the Commons ſay, to bring an Action at Law againſt Perſons not privileged is a Breach of Privilege, all Mankind will ſay it is not.

'That this comes upon a Petition of five Men to the Lords, ſetting forth, they have been impriſoned by the Commons for bringing their Actions againſt the Conſtables of Ayleſbury, and for ſuing out Writs of *Habeas Corpus*, and are at leaſt delayed in a Writ of Error.

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'The Queſtion lies in a narrow Compaſs; Whether they have a Right to bring their Actions at Law; if ſo, it is Injuſtice to impriſon them for doing it;

'A Hardſhip to deny them Writs of *Habeas Corpus*, and a greater to impriſon their Council and Agents for endeavouring to procure them their Liberty.

'That their Right is ſettled by a Judgment of Law, which will ever remain, 'till altered by the Legiſlature.

'That a Declaration of one Houſe, or both Houſes, cannot alter the Law.

'That the Lords intend not to diſturb the Commons in the Right of judging, only as to their own Members.

'That the material Difference is between judging of the Right of the Electors, and the Right of the Elected.

'And there may be Caſes, as here, where the Election is not in queſtion, and yet the Electors receive great Damage in being denied their Vote.

'That the Right of Freehold is a Man's Birth-right, and cannot be taken from him but by Law.

'That if any Perſon be injured by any Officer whatſoever, he may, by Law, ſeek for Reparation: otherwiſe, there is a Right without a Remedy, which is no Right at all.

'In anſwer to this, your Managers ſaid, This Action is of the firſt Impreſſion; and 'tis a good Argument no ſuch Action lies, becauſe none was ever brought before, and eſpecially, becauſe Occaſions cannot be preſumed to have been wanting in every new Election of Members to ſerve in Parliament, nay many more juſtifiable than in the late Caſe of Aſhby and White, where the Plaintiff was a Perſon likely to become chargeable to the Pariſh, and therefore removed by the Order of two Juſtices: And this, by the way, brings in mind the printed Caſe of Aſhby and White, from the Report of the Lords Committees, where 'tis given in Anſwer, no ſuch Action before was brought, that few had ſuch a true Engliſh Spirit as that Plaintiff, tho' 'tis ſaid he then was a Cobler, and formerly had been an Hoſtler; and his Breaſt, it ſeems, was firſt warmed with this true Engliſh Spirit, which was rather a Spirit of Faction,

'And it is worthy Obſervation, that in this Caſe, the Coſts and Charges ſuſtained by Aſhby, or ſomebody for him, could not be leſs than 100*l.* more than the Coſts and Damages he recovered; ſo that it was *infelix Victoria*, and no Benefit, but a Loſs to him. A noble Lord was pleaſed to ſay further, that tho' he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privileges. That Argument appears very ſtrange, ſince the Commons ſay the Matter in queſtion is their Privilege; and if the Lords ſaying 'tis not, is ſufficient to diveſt them of it, the ſame Method

thod may diveſt the Commons of all the reſt. The Commons are not going about to create new Privileges, but continue the Poſſeſſion of thoſe which their Predeceſſors ever enjoyed and exerciſed; and which they think neither this or any other future Houſe of Commons, can ever depart from. Anno 3 Ann. 1704.

'The Lords afterwards receded from the Generality of their ſecond and laſt Reſolutions.

'They ſaid, the ſecond, ſo far as that every one who apprehends himſelf injured has a Right to ſeek Redreſs, was general, but what followed of an Action at Law, was confined to the preſent Caſe.

'So the ſixth, tho' it was general, was to be underſtood in this particular Caſe.

'As to what was ſaid, that none but a ſuperiour Court can take cognizance of what another does, it was anſwered, That when the Earl of Shaftsbury was committed by the Houſe of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of King's-Bench: This was complained of to the Houſe of Lords, but they paſſed it over, being of Opinion a Man might ſeek for Liberty where he would.

'The Lords Judicature is too ſacred a thing to be touched.

'Your Managers thereupon returned, They wiſhed your Lordſhips had ſaid that at the beginning, it would have ſaved much time and ſhortened the Debates; for the Commons think their Privileges as ſacred as the Lords can their Judicature. Your Managers proceeded to ſay,

'That as nothing offered at this Conference, or the laſt, was meant to ſubmit or leſſen the Privilege of the Commons; much leſs had any thing in the Precedents, in the Time of Queen Elizabeth and James I, produced at the laſt Conference, any Tendency that way.

'And, in anſwer to ſome Objections made to thoſe Precedents, your Managers ſaid, the Commons did not take upon them to ſet forth the whole Proceedings which are very long; but tho' they had not their Books there to make out the Quotations, can depend upon what they have ſtated to be true.

In the Precedent of Sir Francis Goodwin's Caſe, cited by the Commons, there are no Omiſſions that, duly conſidered, can make that Caſe leſs to the Advantage of the Commons, on this Occaſion; for if the Word Order be omitted, and taking the Anſwer to have been, that they did conceive it did not ſtand with the Honour and Order of the Houſe, to give Account of any of their Proceedings or Doings, that will little alter the Caſe, ſince it is plain, from the Entry on the Journal, the Commons in returning this Anſwer, had regard chiefly to the Precedent then quoted, 27 Eliz. when the Commons refuſed to give the Lords any Reaſons (tho' the Lords deſired them) for the rejecting, at the firſt reading, a

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Bill the Lords had ſent down to the Commons: The Reaſons for the Commons Proceedings in this Caſe were prepared by themſelves, which they did communicate to the Lords; but the Lords were not to add or diminiſh: And tho' ſome Lords were preſent at the Commons delivering their Reaſons, there is a material Diſtinction, upon the Commons Journals, of thoſe Lords being preſent as Lords of the Council, and not as Lords of the Parliament.

'And the noble Lord who took notice of the Commons Omiſſion in the ſtating of this Caſe, and pretended to ſtate it fully and truly himſelf, omitted, that the new Writ was ordered to iſſue at the Requeſt of Sir Francis Goodwin, by his Letter; which, for the Satisfaction of the Houſe, was read and entered on the Journal, before any Queſtion for the new Election was made.

'In that of the 28th of Eliz. the Commons did not, at the laſt Conference, omit to take notice of the Judges Determination; but it is juſtly ſtated as a Matter the Commons, in the Examination of that Caſe, were informed of, but did not reſpect; the Commons then aſſerting themſelves to have the ſole Determination of that Caſe.

'Your Managers further urged, Tho' the Commons do not ſubmit their Privileges, it may be proper to aſcertain what they claim, with the Reaſons why they are at this time the more concerned to oppoſe all Attempts upon them.

'They do agree the Right of voting may be grounded upon Freehold, Charter, or Preſcription; and they do not pretend to draw them from the Courts of Common-Law, when, as ſuch, they come there originally, immediately and directly in queſtion.

'But it is as plain, when the Right of voting in an Election is the thing originally, immediately and directly in queſtion, that is ſolely cognizable in the Houſe of Commons, whoſe Determination is the ſtanding Rule for all Places: And if the Elections only were examinable by the Commons, and every Elector's Vote was examinable elſewhere, the Conſequence of ſuch different Determinations is fully ſtated, as delivered at the laſt Conference; which common and known Difference of coming originally, or collaterally and incidentally in queſtion, will anſwer the Caſe of the Earl of Banbury, where the Order of the Houſe of Lords came only incidentally in queſtion, upon an Indictment for Murder; nor is there any Injury in this caſe that requires an Action, much leſs Damages: The Elector's Vote, upon every Election, depends upon its own true Foundation, as the Elector then ſtands entitled by Freehold, Charter, or Preſcription, whether he was entitled, or was allowed, or refuſed at any former Election, or not.

'Nor

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'Nor is Damage always neceſſary to a Remedy; that which is ſpecific and gives the Right, is the moſt noble and compleat Remedy; Damages being only ſecondary, ſubſtituted by way of Recompence where the other cannot be had, as appears by many Inſtances in the Law.

'The Commons had great reaſon to aſſert their ancient Right, and withſtand theſe late and new Attempts upon the Conſtitution, which in every ſtep have been unprecedented; *viz.* the Action, the *Habeas Corpus*, and the Writ of Error.

'The Action was never known, tho' the like Occaſions have been as frequent as Elections, unleſs theſe Aylesbury Men have more refined Notions of their Rights and Privileges than others ever had.

'As to the *Habeas Corpus*, the Argument is ſo much ſtronger as Liberty is dearer than Property.

'As to the Writ of Error, tho' the Lords Reſolution is general, they now aſſert it to be of right only in this Caſe.

'As the Commons, at the laſt Conference, waved the Point of a Writ of Error being of Right or of Grace, ſo they do now, not by way of Admiſſion, but as 'tis not material in this Caſe.

'But thus much may be obſerved, that this is not the common Caſe, where the Queſtion ariſes and falls under the Determination of the Judges of the Law, which is of Petitions of Right, and Writs of Error in the Courts of Weſtminſter, (as that of Sir Thomas Armſtrong was) where the Queen is Party; there it is in the room of a Suit againſt the Crown, and if denied, the Party has no Remedy.

'This Petition to the Queen, for a Writ of Error in Parliament, is properly a Parliamentary Caſe, and is the ſame when the Queen is Party or not; and ſeems ſome Remnant of our ancient Conſtitution, where all Petitions were to the King in Parliament. or to the King and his great Council, which was diſtinct from the Houſe of Peers, and were examined by Triers, whether fit for the Parliament to proceed upon, or not; and to ſay, that upon ſuch Examination, they could not be rejected, is to ſay, that Examination was inſignificant. And, if in this Caſe no Writ of Error lies, it cannot then be ſaid, that the denying of it is an Obſtruction of Juſtice, or contrary to *Magna Charta*.

'That a Writ of Error lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion of former times, as appears in the Caſe of the City of London, 7 Jac. reported by the Lord Chief-Juſtice Coke, in his eighth Report, where one under an Arreſt, for the Penalty in a By-Law, brought his *Habeas Corpus*, and the Judges took it for a Ground, that no Iſſue or Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their

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Award; and upon that, as a Principle, grounded their Reſolution, *Fol.* 128.

'And that this never came directly in queſtion, is becauſe a Writ of Error in ſuch Caſe was never asked, much leſs had, upon a bare Commitment of any Court whatſoever: And it is hard to imagine that there is any lawful Reſort or Appeal for Liberty, left untried at this Day, when ſo many, in all times, have had Occaſion to apply for it; eſpecially conſidering the frequent Commitments of both Houſes of Parliament.

'That the Commons are not ſurprized, to find the Lords make ſuch a Shew of ſubmitting their Privileges to the Courts of Weſtminſter, when it is in order to draw all the Rights and Privileges of both Houſes to their own final Determination; and much leſs when they conſider how inſignificant all Courts of Juſtice are rendered, while their Lordſhips exerciſe the laſt Reſort in Judicature.

'The ſeveral Attempts in the Way of Judicature, which have been made upon the Conſtitution, are ſo many Reaſons for the Commons at laſt to make a Stand.

'The very Form of the Writs of Error in Parliament is altered in a moſt material Part.

'It is ſtill returnable into Parliament generally; and the Judgment is entered, *per Cur' Parliamenti.*

'But where the ancient Form, which appears in *Roſtall's Entries, Fol.* 302. was, *Ut de concilio & adviſamento dominorum ſpiritualium & temporalium ac communitatum in Parliamento noſtro exiſtentium ulterius pro errore corrigendo fieri faciamus quod de jure, &c.*

'Of late, as appears by a Writ of Error, printed in the Lord Chief-Juſtice Saunders's ſecond Report, *Fol.* 223. (and agreeable to that are all the modern ones) that Word (*communitatum*) is omitted.

'This is only touched for an Inſtance, that even the higheſt Records, which ought to derive to us our Laws and Conſtitution pure and entire, have been corrupted.

'And to proceed to inſtance ſome modern Innovations upon our Conſtitution, in point of Judicature:

'In December 18. Jac. 1. It appears by the Lords Journal, that an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as new and unprecedented, as any of the Attempts which occaſion the preſent Conference.——

'Here the Lords interrupted your Managers, affirming, That they were reſtrained from entering into Debate of their Judicature of Appeals from Equity, as foreign from the Subject-Matter of the laſt Conference. But it was anſwered, and inſiſted by your Managers, that this was Part of the Matter offered at the laſt Conference.

'And

'And your Managers declared, That they had more to offer, and were ready to proceed upon the Subject-Matter of the laſt Conference, in ſuch Manner as they thought their Duty to the Commons of England required, if their Lordſhips thought fit to hear them: Whereupon the Lords did riſe, and broke off the Conference.' Anno 3 Ann. 1704.

Reſolved, That the Proceedings of this Houſe, in relation to the Aylesbury Men, committed by this Houſe for a Breach of Privilege, and the other Proceedings of this Houſe in that Matter, are in Maintenance of the ancient and undoubted Rights and Privileges of the Commons of England.

Ordered, That all Proceedings, in relation to the Aylesbury Men, committed by this Houſe, and the Report of the Lords Journal, and Reports of the Conference, and of the free Conference, be printed.

We muſt now return back to the Month of December, on the 8th of which, Her Majeſty was pleaſed to give the royal Aſſent to the following Bill, *viz. An Act for granting an Aid to her Majeſty by a Land-Tax to be raiſed in the Year one thouſand ſeven hundred and five.*

And afterwards her Majeſty was pleaſed to make a gracious Speech to both Houſes; which is as followeth:

'My Lords and Gentlemen,

'I Am glad of this Occaſion, to return you my hearty Thanks for your making good the Aſſurances you gave me in your ſeveral Addreſſes, of your Zeal and Readineſs to promote the public Buſineſs. Queen's Speech in Parliament.

'And I muſt thank you, Gentlemen of the Houſe of Commons, in particular, for your early Diſpatch of ſo great a Part of the neceſſary Supplies, which cannot fail of being a very eſſential Advantage, both in the Forwardneſs of our own Preparations, and in the great Encouragement it will give to all our Allies.

'My Lords and Gentlemen,

'I look upon this good Beginning to be ſo ſure a Pledge of your Affections for my Service, and for our Common-Intereſt, That I have not the leaſt Doubt, but you will continue with the ſame Zeal to diſpatch what remains of the Public Buſineſs, and to bring this Seſſion to a happy and ſpeedy Concluſion.'

The 11th, being the Day appointed by the Commons, for taking into Conſideration the great Services that had been performed by the Duke of Marlborough, the laſt Summer, and to conſider of ſome Means to perpetuate the Memory of them; they came to this unanimous Reſolution, 'That an humble Addreſs be preſented to her Majeſty,

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expreſſing the great Senſe this Houſe hath of the glorious Victories obtain'd by the Forces of her Majeſty, and her Allies, under the Command of his Grace the Duke of Marlborough; and humbly deſir'd her Majeſty, That ſhe would be graciouſly pleaſed to conſider of ſome proper Means to perpetuate the Memory of the great Services performed by the ſaid Duke.' This Addreſs being preſented to her Majeſty by the whole Houſe, Her Majeſty was pleaſed to give this gracious Anſwer.

Vote in favour of the Duke of Marlborough.

Queen's Anſwer to their Addreſs upon it.

'Gentlemen, I am very well pleaſed with your Addreſs; 'And I will take it into Conſideration, as you deſire, and 'ſend you my Thoughts upon it, in a little time.'

The 13th, the Houſe reſolv'd, 'That a Bill ſhould be brought in, for the effectual ſecuring the Kingdom of England, from the apparent Dangers that might ariſe from ſeveral Acts lately paſſed in the Parliament of Scotland: And about a Month after, Mr. Conyers reported, from the Committee of the whole Houſe, to whom it was referr'd to conſider of Heads for that Bill, the Reſolutions which they had taken, and which were as follows, 'That it be one Head of the Bill to enable her Majeſty to nominate and appoint Commiſſioners for England, to treat with Commiſſioners for Scotland, for an Union between the two Kingdoms. 2. That all Natives of the Kingdom of Scotland, except ſuch as are ſettled and ſhall continue Inhabitants of England, or the Dominions thereunto belonging, or at preſent in Service in the Army or Navy, ſhall be reputed as Aliens, unleſs the Succeſſion to the Crown of Scotland be ſettled on the Princeſs Sophia of Hanover, and the Heirs of her Body, being Proteſtants. 3. That a more effectual Proviſion be made to prevent the Exportation of Wool from England and Ireland into Scotland. 4. That Proviſion be made to prevent the Importation of Scotch Linnen into England or Ireland; and to permit the Exportation of the Linnen Manufactures of Ireland, in Engliſh Bottoms, into her Majeſty's Plantations in the Weſt Indies. 5. That immediate Proviſion be made to prevent the conveying of Horſes, Arms and Ammunition from England or Ireland into Scotland. 6. That all the Proteſtant Freeholders of the ſix northern Counties of England, be permitted to furniſh themſelves with Arms.' Theſe Reſolutions being read twice, all, except the laſt, were agreed unto by the Houſe; who appointed a Committee, to prepare and bring in a Bill accordingly, and on the 16th, upon the ſecond Reading of the Lords Bill to the ſame Purpoſe, ordered it to lie upon the Table.

Reſolves in relation to Scotland.

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The 14th, It was unanimouſly reſolved to give the Duke of Marlborough the Thanks of their Houſe, for the eminent Services he had performed to her Majeſty and this Kingdom, as well in the glorious Victories he had obtained by the Arms of her Majeſty and her Allies under his Command, as for his prudent Negotiations with ſeveral Princes and States; and, having appointed a Committee to attend his Grace for that End, Mr. Comptroller reported on the 15th, That they had congratulated his Arrival, as they were directed, and that thereupon his Grace was pleaſed to ſay to this Effect: 'It's a great Satisfaction to me to find, that my faithful Endeavours in diſcharging my Duty to the Queen and to the Public are ſo favourably accepted. I beg leave to take this Opportunity of doing Juſtice to a great Body of Officers and Soldiers who accompanied me in this Expedition, and all behaved themſelves with the greateſt Bravery imaginable. And I am ſure this Honour done us by the Houſe of Commons, in taking ſo much notice of it, will give a general Satisfaction and Encouragement to the whole Army.'

Thanks given to the Duke of Marlborough.

His Grace's Anſwer.

On the 16th, her Majeſty was pleas'd to give the Royal Aſſent to the two following Acts, *viz.* *An Act for raiſing Monies by Sale of ſeveral Annuities for carrying on the preſent War: And an Act for continuing the Duties upon Malt, Mum, Syder and Perry, for one Year:* And alſo to five private Bills. The next day Mr Chancellor of the Exchequer acquainted the Houſe, that he had a Meſſage ſign'd by her Majeſty: And he delivered it to Mr Speaker, who read the ſame to the Houſe, and was as followeth.

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'Her Majeſty having taken into her Conſideration the 'Addreſs of this Houſe, relating to the great Services per-'form'd by the Duke of Marlborough, does incline to 'grant the Intereſt of the Crown in the Honour and Manor 'of Woodſtock, and Hundred of Wootton to him and his 'Heirs; and deſires the Aſſiſtance of this Houſe upon this 'extraordinary Occaſion.

Meſſage from the Queen relating to the Manor of Woodſtock.

'The Lieutenancy and Rangerſhip of the Parks, with 'the Rents and Profits of the Manor and Hundred, being 'granted for two Lives, her Majeſty thinks it proper that 'Incumbrance ſhould be cleared.'

Upon which the Houſe reſolved, 'that a Bill be brought in to enable her Majeſty, to grant the Honour and Manor of Woodſtock and hundred of Wootton, to the Duke of Marlborough and his Heirs.' And it was further reſolved, 'That an humble Addreſs be preſented to her Majeſty, that ſhe would be graciouſly pleaſed to advance the Money for clear-

A Bill order'd in, thereon.

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clearing the preſent Incumbrance upon the Lieutenancy and Rangerſhip of the Parks, Rents, and Profits of the Honour and Manor of Woodſtock and Hundred of Wootton, in order to the preſent Settlement thereof upon the Duke of Marlborough and his Heirs.' About the ſame time the Party that prevailed in the Houſe of Commons, both to make themſelves Popular by a Self-Denying Act, and to mortify ſome eminent Members, who had left them, and were now in Places of Profit and Truſt, brought in *a Bill for excluding out of the Houſe of Commons, all Perſons in any Offices or Employments erected ſince the* 6th *Day of February*, 1684. *or to be erected.* This Bill had a quick and eaſy Paſſage through the Houſe of Commons, but being ſent up to the Houſe of Lords, the latter made ſeveral Amendments to it, which were diſagreed to by the Commons, and ſo that Bill was loſt. There was alſo another Bill ſet on foot by the Commons, about the 16th, to prevent Perſons who were entitled by their Offices to receive any Benefit by public annual Taxes, to be granted, from being Members in Parliament, while they were in ſuch Offices, which being levelled againſt many brave and deſerving Members who ſerved the Nation, both by Sea and Land, occaſioned ſome Murmurings, to ſtifle which, the Commons on the 20th, impower'd the Committee to receive a Clauſe to except out of that Bill, all Flag-Officers in the Navy, and Captains of Ships, and all the General-Officers in the Army, and all Colonels of the Land-Forces, and Marines; but, notwithſtanding this Allay, when the Bill came to a third reading, it was reſolved it ſhould not paſs.

Place-Bill loſt.

Addreſs relating to the Earl of Ranelagh.

The 22d. the Houſe reſolved, 'That an Addreſs ſhould be preſented to her Majeſty, that ſhe would be pleaſed to give directions to oblige the Earl of Ranelagh to bring his Accounts to a final Determination; and what ſhall appear to be due from him upon the Balance of his ſaid Accounts, that his Lordſhip be obliged to pay the ſame to the Uſe of the Public;' which being preſented accordingly, her Majeſty was pleaſed to ſay. 'That ſhe had not omitted to give the 'neceſſary Directions in this Particular; and ſhould always 'be deſirous to do every thing that may bring the public Ac- 'counts to a final Determination.'

And having alſo reſolved, 'That an Addreſs ſhould be preſented to her Majeſty, that ſhe would be pleaſed to give Direction for the obliging Mr. Parkhurſt and Mr. Paſchall, and the reſt of the Commiſſioners of Prizes during the late War, to make up their Accounts according to the Courſe of the Exchequer;' and the ſame being preſented to her, ſhe anſwer'd, 'That ſhe would order, that the moſt proper 'Methods be taken of having the Accounts of the Prizes 'during

'during the late War made up and perfect, acccording to 'the Courſe of the Exchequer.' Anno 3 Ann. 1704.

On the 8th of January the Houſe of Commons took into Conſideration the Treaty with the King of Pruſſia lately concluded by the Duke of Marlborough, and unanimouſly reſolved, 'That an humble Addreſs be preſented to her Majeſty. Returning the Thanks of this Houſe to her Majeſty, for concluding the late Treaty with the King of Pruſſia, which was ſo ſeaſonable a Support to the Duke of Savoy, and ſo great an Advantage to the Common Cauſe: And alſo to aſſure her Majeſty, that her faithful Commons would effectually enable her Majeſty to make good the Treaty with the King of Pruſſia, who, upon ſo many Occaſions, hath ſignaliz'd his Zeal for the Proteſtant Religion and Liberty of Europe.' The next Day Mr. Secretary Hedges acquainted the Houſe, That their Addreſs having been preſented to her Majeſty, her Majeſty was pleaſed to make the following Anſwer. Addreſs in praiſe of the K. of Pruſſia.

'Her Majeſty returns you many Thanks for the Aſſu-'rances you have given her in your Addreſs, and is very 'well pleaſed to find you have ſo juſt a Senſe of the King 'of Pruſſia's Zeal for the Proteſtant Religion, and the Li-'berty of Europe.' Queen's Anſwer.

The 26th of the ſame Month, Mr. Speaker reported to the Houſe, 'That the Houſe had attended her Majeſty with their Addreſs, That her Majeſty would be graciouſly pleaſed to uſe her Intereſt with her Majeſty's Allies, that they may the next Year furniſh their ſeveral compleat Quota's, both by Sea and Land, according to their reſpective Treaties; and that her Majeſty will be graciouſly pleaſed to continue her Endeavours for an Accommodation between the Emperor and his Subjects now in Arms in Hungary, in order to the better and more effectual carrying on the preſent juſt and moſt neceſſary War: And that her Majeſty was pleaſed to give this gracious Anſwer.' Addreſs relating to the Allies and the Hungarian Malecontents.

'Gentlemen, I will continue to uſe my beſt Endeavours to 'obtain a Compliance from the Allies with what is deſired 'in your Addreſs. As to the Accommodation with the Male-'contents in Hungary, I have made Application to the Em-'peror ſeveral times upon that Point, and ſhall continue to 'preſs him in it with all the earneſtneſs imaginable.' Queen's Anſwer.

Towards the end of the Seſſion, the Lords paſſed a Bill *for the further preventing the Growth of Popery*, which being ſent down to the Commons, it was generally wiſhed, that ſo wholeſome an Act might meet with no Obſtruction. But the Commons made ſuch Amendments to it, on the 7th of March, as came little ſhort of the Bill for preventing Occaſional Bill againſt Popery.

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casional Conformity; The said Amendment ran thus: 'Provided always that all Persons, who, by Virtue of this Act shall be obliged to take the Oaths of Allegiance and Supremacy, and subscribe the Declaration, shall at the same time declare himself to be a Member of the Church of England, as now by Law established; such Declaration to be entered on the same Roll, where the said Oaths and Declarations, so to be taken and subscribed, are to be entered. And in Case any such Persons shall, after their taking such Oaths, and making such Declarations as aforesaid, knowingly or wilfully resort to, or be present at any Conventicle, Assembly, or Meeting, under Colour or Pretence of any Exercise of Religion, in other manner than according to the Liturgy and Practice of the Church of England, in any Place within this Kingdom, shall forfeit the Sum of 100l. for every time he shall be present at such Assembly, Conventicle or Meeting.

The Question was putting, the 14th, that the said Bill be read the third time, when Mr. Aston, Deputy Gentleman Usher of the Black-Rod, summoned the Commons to attend the Queen in the Lords House.

And the Commons being come thither accordingly, her Majesty was pleased to give the Royal Assent to

Bills pass'd by the Queen.

An Act for continuing Duties upon Low-Wines, and upon Coffee, Tea, Chocolate, Spices and Pictures, and upon Hawkers, Pedlars and Petty-Chapmen, and upon Muslins; and for granting new Duties upon several of the said Commodities, and also upon Callicoes, China-Ware and Drugs.

An Act for granting to her Majesty a further Subsidy upon Wines and Merchandizes imported.

An Act for the better enabling her Majesty to grant the Honour and Manor of Woodstock, with the Hundred of Wootton, to the Duke of Marlborough, and his Heirs, in Consideration of the Eminent Services by him performed to her Majesty and the Public.

An Act for the Relief of Fulke Emes, Gent. and others, who had elapsed their Times, either for paying their Money, or naming their Nominees for purchasing Annuities: And also for Relief of Sir John Mead, Knt. and Bar. who had elapsed his time for paying part of his Purchase-Money for a forfeited Estate in Ireland; and also for Relief of Dorothy Ireland, and others, in respect of several Tickets for Payment of Annuities, and of several Million-Lottery and Malt-Lottery Tickets, and Exchequer-Bills, and Debentures of the Army, which have been burnt or lost.

An Act for encouraging the Importation of Naval Stores from her Majesty's Plantations in America.

An Act for the effectual securing the Kingdom of England, from the apparent Dangers that may arise from several Acts lately passed in the Parliament of Scotland. An

An Act for giving like Remedy upon promiſſory Notes, as is now uſed upon Bills of Exchange, and for the better Payment of Inland-Bills of Exchange. Anno 3 Ann. 1704.

An Act to permit the Exportation of Iriſh-Linnen Cloth to the Plantations, and to prohibit the Importation of Scotch-Linnen into Ireland.

An Act for the better recruiting her Majeſty's Land-Forces and the Marines for the Year One Thouſand Seven Hundred and Five.

An Act for prohibiting all Trade and Commerce with France.

An Act for the Relief of the Creditors of Thomas Pitkin, a Bankrupt, and for the apprehending of him, and the Diſcovery of the Effects of the ſaid Thomas Pitkin, and his Accomplices.

An Act for making perpetual an Act for the more eaſy Recovery of ſmall Tythes; and alſo an Act for the more eaſy obtaining Partition of Lands in Coparcenary, Joint-Tenancy and Tenancy, in Common; and alſo for making more effectual and amending ſeveral Acts relating to the Return of Jurors.

An Act to prevent all Traiterous Correſpondence with her Majeſty's Enemies.

An Act for raiſing the Militia for the Year One Thouſand Seven Hundred and Five, altho' the Months Pay formerly advanced be not repaid.

An Act for puniſhing Mutiny and Deſertion and falſe Muſters; and for the better Payment of the Army and Quarters.

And to 52 private Bills.

And her Majeſty afterwards made a moſt gracious Speech to both Houſes, which follows:

' My Lords and Gentlemen,

' I Cannot put an end to this Seſſion, without doing you the ' Juſtice to Acknowlege, you have fully made good the ' Aſſurances you gave me at the beginning of it, by the ' great Readineſs you have ſhewn in the Diſpatch of the ' public Buſineſs; and I make no doubt, but this Diſpatch ' will prove a real Advantage to us, and a great Diſcouragement to our Enemies. Queen's Speech in Parliament.

' Gentlemen of the Houſe of Commons,

' I return you my hearty Thanks in particular, for the ' great Supplies with which you have enabled me to carry ' on this neceſſary War, I aſſure you they ſhall be carefully ' applied to the Uſes for which they have been given; and ' I perſuade myſelf I ſhall always have the cheerful Aſ' ſiſtance of my dutiful and loving Subjects in the Proſecution ' of the preſent War, till our Enemies are obliged to ſuch ' a Peace as ſhall be a laſting Advantage and Security to us, ' and to our Allies.

' My Lords and Gentlemen,

' We have, by the Bleſſing of God, a fair Proſpect of

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'this great and desirable End, if we do not disappoint it by 'our unreasonable Humour and Animosity, the fatal Effects 'of which we have so narrowly escaped in this Session, that 'it ought to be a sufficient Warning against any dangerous 'Experiments for the future.

'I conclude therefore with exhorting you all to Peace and 'Union, which are always commendable, but more particularly necessary at this time, when the whole Kingdom 'being shortly to proceed to new Elections, it ought to be 'the Care of every body, especially of such as are in public 'Stations, to carry themselves with the greatest Prudence 'and Moderation: Nothing will contribute more to our Reputation abroad, and our Security at home.'

Then the Lord-Keeper (by her Majesty's Command) prorogued the Parliament to Tuesday the first of May next.

Second Parliament of Q. Anne.

The Parliament met on Thursday the 25th, and her Majesty being come to the House of Peers, and seated on the Throne in her royal Robes, a Message was sent to the Commons requiring their Attendance in the House of Peers, whither they came accordingly. The Lord-Keeper then, by her Majesty's Command, signified to them her royal Pleasure, that they should forthwith proceed to the Choice of a fit Person to be their Speaker, and present him to her Majesty the 27th. The Commons being returned to their own House, it was scarce ever known in any Age there should be so many Members present, as at this Time; and the Nation was at a gaze, about the good or ill Success of this Parliament, by the Choice they would make of their Speaker; the Candidates were the Right Honourable John Smith Esq; and William Bromley, Esq; many smart Speeches were made upon the Occasion; but, upon the Division of the House, the former carried it by a Majority of upwards of forty; who being the 27th, presented to her Majesty, seated on her Throne in the House of Peers, her Majesty was graciously pleased to approve the Choice of a Person so well qualified for that high Employment: and then made a most gracious Speech to both Houses, as follows;

J. Smith Esq; chosen Speaker.

'My Lords and Gentlemen,

Queen's Speech in Parliament.

'I Have been very desirous to meet you as early as I thought 'you might be called together without Inconvenience to 'yourselves.

'And it is with much Satisfaction I observe so full an Appearance at the opening of the Parliament, because it is a 'Ground for me to conclude you are all convinced of the 'Necessity of prosecuting the just War, in which we are 'engaged, and therefore are truly sensible that 'tis of the 'greatest Importance to us to be timely in our Preparations.

'Nothing

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'Nothing can be more evident, than that, if the French 'King continues Maſter of the Spaniſh Monarchy, the Ba- 'lance of Power in Europe is utterly deſtroyed, and he will 'be able, in a ſhort time, to engroſs the Trade and the 'Wealth of the World.

'No good Engliſhman could at any time be content to 'ſit ſtill and acquieſce in ſuch a Proſpect: And at this time 'we have great Grounds to hope, that, by the Bleſſing of 'God upon our Arms, and thoſe of our Allies, a good Foun- 'dation is laid for reſtoring the Monarchy of Spain to the 'Houſe of Auſtria; the Conſequences of which will not only 'be ſafe and advantageous, but glorious for England.

'I may add, We have learnt by our own Experience, 'that no Peace with France will laſt longer than the firſt 'Opportunity of their dividing the Allies, and of attacking 'ſome of them with Advantage.

'All our Allies muſt needs be ſo ſenſible, this is the true 'State of the Caſe, that I make no doubt but Meaſures will 'ſoon be concerted, as that, if we be not wanting to our- 'ſelves, we ſhall ſee the next Campaign begin offenſively on 'all ſides againſt our Enemies, in a moſt vigorous Manner.

'I muſt therefore deſire you, Gentlemen of the Houſe of 'Commons, to grant me the Supplies which will be requiſite 'for carrying on the next Year's Service, both by Sea and Land, 'and at the ſame time to conſider, that the giving all poſſible 'Diſpatch will make the Supply itſelf much more effectual.

'The Firmneſs and Conduct which the Duke of Savoy has 'ſhewn, even amidſt extreme Difficulties, is beyond Example.

'I have not been wanting to do all that was poſſible for 'me, in order to his being ſupported. I ought to take no- 'tice to you, that the King of Pruſſia's Troops have been very 'uſeful to this End. Your Approbation of that Treaty laſt 'Seſſions, and the Encouragement you gave upon it, leave 'me no doubt of being able to renew it for another Year.

'I take this Occaſion to aſſure you, that not only whatever 'ſhall be granted by Parliament for bearing the Charge of 'the War, ſhall be laid out for that Purpoſe, with the 'greateſt Faithfulneſs and Management; but that I will con- 'tinue to add, out of my own Revenue, all I can reaſonably 'ſpare beyond the neceſſary Expences for the Honour of 'the Government.

'My Lords and Gentlemen,

'By an Act of Parliament paſſed the laſt Winter, I was 'enabled to appoint Commiſſioners for this Kingdom, to 'treat with Commiſſioners to be empower'd by Authority of 'Parliament in Scotland, concerning a nearer and more com- 'pleat Union between the two Kingdoms, as ſoon as an Act 'ſhould be made there for that Purpoſe; I think it proper for

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me to acquaint you, that ſuch an Act is lately paſſed there, and I intend in a ſhort time to cauſe Commiſſions to be made out, in order to put the Treaty on foot, which I heartily deſire may prove ſucceſsful, becauſe I am perſuaded that an Union of the two Kingdoms will not only prevent many Inconveniences which may otherwiſe happen, but muſt conduce to the the Peace and Happineſs of both Nations, and therefore I hope I ſhall have your Aſſiſtance in bringing this great Work to a good Concluſion.

'There is another Union I think my ſelf obliged to recommend to you in the moſt earneſt and affectionate manner, I mean, an Union of Minds and Affections amongſt ourſelves: It is that which would, above all things, diſappoint and defeat the Hopes and Deſigns of our Enemies.

'I cannot but with Grief obſerve, there are ſome amongſt us, who endeavour to foment Animoſities; but I perſuade myſelf they will be found to be very few, when you appear to aſſiſt me in diſcountenancing and defeating ſuch Practices

'I mention this with a little more warmth, becauſe there have not been wanting ſome ſo very malicious, as even in Print to ſuggeſt the Church of England, as by Law eſtabliſhed, to be in danger at this Time.

'I am willing to hope, not one of my Subjects can really entertain a Doubt of my Affection to the Church, or ſo much as ſuſpect that it will not be my chief Care to ſupport it, and leave it ſecure after me, and therefore we may be certain, that they who go about to inſinuate things of this nature, muſt be mine and the Kingdom's Enemies, and can only mean to cover Deſigns which they dare not publicly own, by endeavouring to diſtract us with unreaſonable and groundleſs Diſtruſts and Jealouſies.

'I muſt be ſo plain as to tell you the beſt Proofs we can all give at preſent of our Zeal for the Preſervation of the Church, will be to join heartily in proſecuting the War againſt an Enemy, who is certainly engaged to extirpate our Religion, as well as to reduce this Kingdom to Slavery.

'I am fully reſolved, by God's Aſſiſtance to do my Part.

'I will always affectionately ſupport and countenance the Church of England, as by Law eſtabliſhed.

'I will inviolably maintain the Toleration.

'I will do all I can to prevail with my Subjects to lay aſide their Diviſions, and will ſtudy to make them all ſafe and eaſy.

'I will endeavour to promote Religion and Virtue amongſt them, and to encourage Trade, and every thing elſe that may make them a flouriſhing and happy People.

'And they who ſhall concur zealouſly with me in carrying on

'on theſe good Deſigns, ſhall be ſure to find my Kindneſs and 'Favour.'

October 6. The Houſe preſented their Addreſs as follows.

Commons Addreſs to the Queen.

'Moſt gracious Sovereign, Your Majeſty's moſt dutiful and loyal Subjects, the Commons of England in Parliament aſſembled, are met together with Minds fully diſpoſed to aſſiſt your Majeſty in compaſſing the great and glorious Deſigns mentioned in your moſt gracious Speech to both Houſes of Parliament, for which we beg leave to return our moſt hearty Thanks, and at the ſame time, to congratulate the glorious Succeſs of Your Majeſty's Arms, and thoſe of your Allies.

'We are fully convinc'd, that the Balance of Power in Europe can never be reſtor'd, till the Monarchy of Spain is in the Poſſeſſion of the Houſe of Auſtria; and that no Peace with France can be ſecure and laſting, whilſt the French King ſhall be in a Condition to break it; and therefore your faithful Commons are fully reſolv'd effectually to enable your Majeſty to carry on the War with Vigour, to ſupport your Allies, and make good ſuch Treaties as your Majeſty ſhall judge neceſſary to reduce the exorbitant Power of France.

'It is no ſmall Encouragement to your Commons, chearfully to grant the Supplies neceſſary for thoſe great ends, to find a frugal Management, and a juſt and prudent Application of the public Money.

'We cannot omit, upon this Occaſion, moſt thankfully to acknowlege your Majeſty's Goodneſs in continuing to contribute out of your own Revenue to the Expences of the War.

'We want words to expreſs the deep Senſe we have of the many Bleſſings we enjoy under your Majeſty's happy Government. We are throughly ſenſible of your affectionate Care to ſupport and countenance the Church of England as by Law eſtabliſhed, your Reſolution to maintain the Toleration, and to encourage the Trade, Union, and Welfare of your People.

'This being the happy Condition of all your Subjects, it is the greateſt Concern imaginable to us to find your Majeſty has ſo juſt Reaſon to reſent the Ingratitude of ſome, who endeavour to foment Animoſities and Diviſions amongſt us: And we cannot without Indignation reflect, that there ſhould be any ſo malicious as to inſinuate that the Church of England, as by Law eſtabliſhed, is, or ever can be in Danger for want of your Majeſty's Care and Zeal to ſupport and maintain it: Your Majeſty's exemplary Piety, your ſteady Adhearence to the Church of England, leave no room to doubt but that theſe Suggeſtions proceed from your Majeſty's and the Kingdom's Enemies; who, to cover their Diſaffection to the preſent Eſtabliſhment and Adminiſtration, endeavour to diſtract your Subjects with unreaſonable and groundleſs Diſtruſts and Jealouſies.

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'Your Majesty may be assured, that your Commons will zealously concur in every thing that may tend to discourage and punish such Incendiaries, and to disappoint your Enemies both at home and abroad.'

'Her Majesties gracious Answer.

Queen's Answer.

'Gentlemen, I take very kindly the Confidence you express in my Care of the Public, and your Concern for the Occasion I have had to complain.

'I return you my hearty Thanks for the Assurances of your Support and Assistance, which, by God's Blessing, I shall always endeavour to improve for the Advantage and Happiness of my People.'

Another Address

This done the Commons went vigorously on with the necessary Supplies and other Matters; and on the 13th, resolved that an Address should be presented to her Majesty, to return her the Thanks of the House, for her great Regard of the Good and Welfare of both her Kingdoms of England and Scotland; for her great Care and Endeavour to settle the Succession of the Kingdom of Scotland in the House of Hanover, for preserving the Peace and promoting the Union of the two Kingdoms; and to assure her that they would, to the utmost of their Power, assist her Majesty to bring that great Work to a happy Conclusion, and likewise that she would be graciously pleased to direct, that the whole Proceedings of the last Sessions of Parliament in Scotland, relating to the Union of the two Kingdoms, and the Settlement of the Succession of Scotland, in the House of Hanover might be laid before that House; and, having ordered an Address to be presented to her accordingly by such Members of that House as were of her Privy-Council, Mr. Secretary Harley acquainted them, That that having been done accordingly, her Majesty was pleased to answer, 'That she took 'very kindly the Sense they expressed of her Endeavours, to 'promote the Protestant Succession, and the Treaty of Union 'with Scotland; and that she had given Direction for complying with their Address, and that they should have the 'State of that Matter, as soon as it could conveniently be 'sent them.'

Queen's Answer.

Proceedings on the Supply.

Proceeding afterwards upon the Supply they resolved, 357,000 l. be granted for Guards and Garrisons, including 5000 Marines for the Fleet. That 886,233 l. 18 s. 6 d. be for the maintaining the 40,000 Men. That 177,511 l. 3 s. 6 d. be for the additional 10,000 Men. That the Proportion with Portugal be 10,210 Men and 222,379 l. 5 s. 10 d. to maintain them. That 5000 Land Forces be maintain'd in Catalonia, and 96,729 l. 11 s. 4 d. be for them. That 414,166 l. 13 s. 6 d. be for her Majesty's Proportion to the Allies.

Allies. That 48,636 l. be for payment, for Bounty-Money to the Forces that were in Germany, 7,047 l. to make good the additional Troops of Hanover and Zell, and 5,296 l. for Levy-Money to recruit the Horſes in Flanders. Anno 4 Ann. 1705.

On the 27th of November her Majeſty came to the Houſe of Peers; and being in her Royal Robes ſeated on the Throne, with the uſual Solemnity, Mr. Acton, Deputy-Gentleman-Uſher of the Black-Rod, was ſent with a Meſſage from her Majeſty to the Houſe of Commons, requiring their Attendance in the Houſe of Peers. The Commons being come thither accordingly, her Majeſty was pleaſed to make a moſt gracious Speech to both Houſes, which is as follows:

'My Lords and Gentlemen.

'HAving newly receiv'd Letters from the King of Spain, and the Earl of Peterborough, which contain a very particular Account of our great and happy Succeſſes in Catalonia; and ſhewing at the ſame time the Reaſonableneſs of their being immediately ſupported: I look upon this to be a Matter of ſo much Conſequence in itſelf, and ſo agreeable to you, that I have ordered a Copy of the King of Spain's Letter to myſelf; a Letter from the Junto of the Military Army of Catalonia; and another Letter from the City of Vich; as alſo an Extract of the Earl of Peterborough's Letter to me, to be communicated to both Houſes of Parliament. Queen's Speech in Parliament.

'I recommend the Conſideration of them to you, Gentlemen of the Houſe of Commons, very particularly, as the ſpeedieſt way to reſtore the Monarchy of Spain to the Houſe of Auſtria; and therefore I aſſure myſelf you will enable me to proſecute the Advantages we have gained in the moſt effectual manner, and to improve the Opportunity, which God Almighty is pleaſed to afford us, of putting a proſperous end to the preſent War.

'My Lords and Gentlemen,

'I muſt not loſe this Occaſion of deſiring you, to give as much Diſpatch to the Matters before you, as the nature of them will allow, that ſo our Preparations for next Year may be early, which cannot fail of being of great Advantage to us.'

The ſame Day an Addreſs of the Commons was preſented to her Majeſty, to congratulate the glorious Succeſs of her Arms, and thoſe of her Allies in Catalonia; and to aſſure her Majeſty, that the Houſe would, to the utmoſt of their Power, enable her Majeſty to proſecute the great Advantages already obtain'd there. And her Majeſty return'd them many Thanks for the Aſſurances they had given her, which ſhe did not doubt Addreſs thereon.

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doubt but would have a very good Effect both at home and abroad.

This done, the Commons, on the 28th, reſolved, 'That 250,000 l. be allowed for the Charge of her Majeſty's Proportion, to proſecute the Succeſſes of King Charles. That 120,000 l. be for Land Service, and 120,000 l. more to tranſport Land-Forces; 3,500 l. for circulating Exchequer-Bills, and 57,000 l. for another Year's Intereſt of unſatisfied Debentures; and next Day, the 29th, the Lords and Commons preſented the following Addreſs to her Majeſty.

Parliament's Addreſs to the Queen about her Allies.

'We your Majeſty's moſt dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, being juſtly alarm'd by the many Artifices which the Emiſſaries of France have put in Practice this laſt Year, in order to raiſe Jealouſies, and create Miſunderſtandings amongſt the Allies engaged in this neceſſary War for the Support of the Liberties of Europe; and being apprehenſive leſt ſuch malicious Inſinuations, if they ſhould paſs unobſerv'd, might in time ſo far take place, as to abate the Spirit, and ſlacken the Zeal of the Confederacy, do moſt humbly beſeech your Majeſty to uſe all poſſible Endeavours to preſerve a good Correſpondence amongſt all the Confederates, and in a moſt particular manner, to maintain and cultivate a ſtrict Friendſhip with the States-General of the United Provinces.

'And we moſt humbly entreat your Majeſty, that as in your own way of acting you have ſet before your Allies a great and noble Example, ſo you would be graciouſly pleaſed, by all other proper means to excite the whole Confederacy to make early and effectual Preparations and to exert their utmoſt Vigour in the Proſecution of the War againſt France.'

Her Majeſty's moſt gracious Anſwer to the Addreſs of both Houſes of Parliament, was to this Effect.

Queen's Anſwer.

'My Lords and Gentlemen, Your joining in this Addreſs, is a very particular Satisfaction to me.

'The Opinion of both Houſes of Parliament will always 'be of the greateſt Weight with me. I ſhall readily com-'ply with your Deſire; and I make no Queſtion but it will 'meet with a juſt Regard from all our Allies.'

December 3. Her Majeſty was pleaſed to give the Royal Aſſent to *An Act for exhibiting a Bill for naturalizing the moſt excellent Princeſs Sophia, Electoreſs and Dutcheſs Dowager of Hanover, and the Iſſue of her Body.*

On the 8th, The Lords having reſolved the Church to be in no Danger, and ſent down their Vote, to the Commons for their Concurrence, the Queſtion was put, Whether they ſhould refer the ſame to a Committee of the whole Houſe, and it was carry'd for the latter, Yeas 220, Noes 157, and agreeing

ing with the Lords to fill the Blank their Lordſhips had left for the Word Commons, in the Reſolve, they likewiſe agreed with them upon an Addreſs to her Majeſty. They preſented it on the 14th, to this Effect. Anno 4 Ann. 1705.

Parliament's Addreſs to the Queen.

'We your Majeſty's moſt dutiful and loyal Subjects, the Lords ſpiritual and temporal and Commons in Parliament aſſembled, having taken into Conſideration your Majeſty's moſt gracious Speech at the Opening of this Parliament, have, upon mature Deliberation, come to the following Reſolution.

'*Reſolved*, By the Lords ſpiritual and temporal, and Commons in Parliament aſſembled, That the Church of England, as by Law Eſtabliſhed, which was reſcued from the extremeſt Danger by King William the Third of glorious Memory, is now, by God's Bleſſing, under the happy Reign of her Majeſty, in a moſt ſafe and flouriſhing Condition: and that whoever goes about to ſuggeſt and inſinuate, That the Church is in Danger under her Majeſty's Adminiſtration, is an Enemy to the Queen, the Church, and the Kingdom.

'Which we humbly beg leave to lay before your Majeſty, and as your Majeſty has been pleaſed to expreſs a juſt Indignation againſt all ſuch wicked Perſons, ſo we aſſure your Majeſty, That we ſhall be always ready, to the utmoſt of our Power, to aſſiſt your Majeſty in Diſcountenancing and Defeating their Practices: And we humbly beſeech your Majeſty to take effectual Meaſures for the making the ſaid Reſolution public, and alſo for puniſhing the Authors and Spreaders of theſe ſeditious and ſcandalous Reports; to the end that all others may, for the future, be deterr'd from endeavouring to diſtract the Kingdom with ſuch unreaſonable and groundleſs Diſtruſts and Jealouſies.' To this her Majeſty was pleaſed to anſwer.

Queen's Anſwer.

'My Lords and Gentlemen, I ſhall readily comply with 'your Addreſs, and am very well pleaſed to find both Houſes 'of Parliament ſo forward to join with me in putting a Stop 'to theſe malicious Reports.'

The 19th, an engroſſed Bill from the Lords, entitled, *An Act for the better Security of her Majeſty's Perſon and Government, and of the Succeſſion to the Crown of England in the Proteſtant Line*, was read a ſecond time, and Charles Cæſar Eſq; upon the Debate of the ſaid Bill, ſtanding up in his Place, and ſaying the Words following, (which were directed by the Houſe to be ſet down in Writing at the Table) 'There is a noble Lord, without whoſe Advice the Queen does nothing, who, in the late Reign, was known to keep a conſtant Correſpondence with the Court at St. Germains.' And the ſaid Mr. Cæſar endeavouring to excuſe himſelf, and being called upon to withdraw, and he being withdrawn accordingly,

Mr. Cæſar gives Offence.

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ingly, and a Debate arising thereupon; the House *Resolved*, That the said Words are highly dishonourable to her Majesty's Person and Government. And, That the said Charles Cæsar Esq; should for his said Offence be committed Prisoner to the Tower.

And is committed Prisoner to the Tower.

On the 21st, Her Majesty was pleased to give the Royal Assent to, *An Act for granting an Aid to her Majesty by a Land-Tax, to be raised in the Year one thousand seven hundred and six: An Act to Repeal several Clauses in the Statute made the third and fourth Years of her present Majesty's Reign, for securing the Kingdom of England from several Acts lately passed in the Parliament of Scotland: An Act for the Naturalization of the most Excellent Princess Sophia, Electoress and Duchess Dowager of Hanover, and the Issue of Her Body*: And to three private Acts.

Royal Assent given to several Acts.

After which her Majesty made the following most gracious Speech to both Houses.

Queen's Speech in Parliament.

'My Lords and Gentlemen,

'THE Unanimity of your Proceedings in this Parliament, has already had so good an Effect all over 'Europe, that I can't but take notice of it to you with great 'Satisfaction. The good Disposition you have shewn in doing your Part, so fully towards an Union with Scotland, is 'also very acceptable to me; and I hope it will prove for 'the Advantage and Quiet of both Kingdoms.

'Gentlemen of the House of Commons,

'I must not omit to take this Occasion of returning you 'my hearty Thanks for the great Dispatch of this seasonable 'Supply, which you have given me: I look upon it as a 'sure Pledge, That the same Zeal and Affection for my Service, and the Good of the Kingdom, will carry you through 'all the necessary Parts of the public Business in this Session.

'My Lords and Gentlemen,

'In case you now think of some Recess, as is usual at this 'Season, I make no doubt you will afterwards return with 'the same good Disposition, to give all possible Dispatch to 'the public Affairs still depending, and bring this Session 'of Parliament to a happy Conclusion.'

The same Day the House adjourn'd to the 7th of January: When they met again, and *Resolved*, That the Thanks of their House should be given to his Grace the Duke of Marlborough, for his great Services perform'd to her Majesty and the Nation, in the last Campaign, and for his prudent Negotiations with her Majesty's Allies, and appointed a Committee for that Purpose: Who having attended his Grace, his Grace said, 'He was so sensible of the great Honour that

The Commons give the Duke of Marlborough Thanks.

was done him by this Meſſage, that he could not have the leaſt Concern at the Reflections of any private Malice, while he had the Satisfaction of finding his faithful Endeavours to ſerve the Queen, and the Kingdom, ſo favourably accepted by the Houſe of Commons.

His Grace's Anſwer.

The next day it was *Reſolved*, 'That towards the Supply granted to her Majeſty, a Tax ſhould be laid upon all Grants of Lands, Tenements, Hereditaments, and Penſions, made ſince the 6th day of February 1684; That the ſaid Tax ſhould be a fifth Part of the Value of the Grant, at the time of the Grant made: That the Duties upon Malt, Mum, Cyder and Perry, granted by an Act of the firſt Year of her Majeſty's Reign, and continued by ſeveral ſubſequent Acts till the 24th of June 1706, ſhould be further continued from the 23d of June 1706, till the 24th of June 1707: And that a further Duty ſhould be laid upon all Low-Wines, or Spirits of the firſt Extraction, made, or drawn from any foreign Materials, or any Mixture with foreign Materials: And *Order'd* a Bill to be brought in upon the ſaid Reſolutions.'

Votes about the Supply.

On the 21ſt it was farther voted, 'That the Duties upon Coals, Culm and Cinders, which, by an Act of the firſt Year of her Majeſty's Reign, entitled, *An Act for further Continuing the Duties upon Coals, Culm and Cinders*, were to continue until the 15th day of May 1708, (Charcoal made of Wood being always excepted) ſhould be further continued from the 14th day of May 1708, until the 30th day of September 1710.

The ſame day, Mr. Secretary Harley acquainted the Houſe, 'That her Majeſty, in purſuance of the Addreſs of both 'Houſes, put out a Proclamation, in which was An En- 'couragement for Diſcovery of the Author or Authors of '*The Memorial of the Church of England*, &c. the * Printer of 'which Book, being now in Cuſtody, and other Perſons be- 'ing

The Queen's Meſſage to the Commons about the Authors of the Memorial.

* *It muſt be obſerv'd, That on the 15th of January, David Edwards, Printer of the Memorial, who had a long time abſconded, and was left without any Support by that Party that had employ'd him, was, by his own Conſent, taken into Cuſtody of a Meſſenger, upon a Promiſe in Writing, from Mr. Secretary Harley, 'That he ſhould have his Pardon, provided he diſcover'd the Author or Authors of that Pamphlet.' Three Days after, being examin'd before the ſame Secretary, he pretended he could fix it upon three Gentlemen, Members of the Houſe of C———, viz. Mr. Poley, Mr. Ward, and Sir Humphrey Mackworth; and related, That a Woman in a Mask, with another barefaced, brought the Manuſcript to him, and made a Bargain with him to have 250 Printed Copies for it; which he deliver'd to four Porters ſent to him by the Perſons concern'd. But though the Woman that came to Edwards without a Mask, and ſome of the Porters were*

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'ing examin'd, in whoſe Depoſitions there appear'd the 'Names of ſome Members of this Houſe: Her Majeſty's 'Tenderneſs for any thing which had the Appearance of 'the Privileges of this Houſe, had inclin'd her to com-'mand him to acquaint the Houſe therewith, before ſhe di-'rected any further Proceedings in the ſaid Examination.' Thereupon the Commons Order'd the Serjeant to go with the Mace into Weſtminſter-Hall, the Court of Requeſts, and Places adjacent, and ſummon the Members there to attend the Service of the Houſe. And the Serjeant being return'd the Houſe *Reſolved*, 'That an humble Addreſs ſhould be pre-ſented to her Majeſty, returning the Thanks of the Houſe, for her gracious Meſſage that Day, and her tender Regard to the Privileges of that Houſe; and to deſire, that ſhe would be pleaſed to give Order for a further Examination into the Authors of the Libel mentioned in the ſaid Meſſage.' Which Addreſs being preſented accordingly, Her Majeſty was pleas'd to anſwer, 'That ſhe was glad to find this Houſe expreſs ſo 'much Reſentment againſt the Libel mention'd in her Meſ-'ſage, and took very kindly the Confidence this Houſe re-'poſed in her, which ſhe would make the beſt Uſe of, for 'the Advantage of the Public.'

Their Addreſs about it.

The Queen's Anſwer.

On the 16th of February the Queen came to the Houſe of Peers, in the uſual State, and the Commons being ſent for up, her Majeſty gave the Royal Aſſent to *An Act for continuing the Duties upon Malt, Mum, Cyder and Perry, for the Service of the Year, One Thouſand Seven Hundred and Six*; *An Act for continuing the additional Subſidy of Tonnage and Poundage, and certain Duties upon Coals, Culm and Cinders, and additional Duties of Exciſe; and for ſettling and eſtabliſhing a Fund thereby, and by other Ways and Means, for Payment of Annuities, to be ſold for raiſing a further Supply to her Majeſty, for the Service of the Year, One thouſand Seven Hundred and Six, and other Uſes therein mentioned*; *An Act for making the Town of New-Roſſe in the County of Wexford, in the Kingdom of Ireland, a Port for the exporting Wool from Ireland into this Kingdom*; *An Act for making the River Stower Navigable, from the Town of Maningtree in the County of Eſſex, to the Town of Sudbury in the County of Suffolk*; and to 13 private Bills.

Acts paſſed by the Queen.

And then her Majeſty made the following Speech to both Houſes:

'My

were found out and taken up, yet it was impoſſible to carry on the Diſcovery any farther. Which gave Occaſion to a Member of the Houſe of Commons (Mr. Poley) to ſay, 'That it was not uſual to accuſe Members of their Houſe, of being concern'd in any thing to the Prejudice of the Government, without naming their Names.

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The Queen's Speech to both Houſes.

'My Lords and Gentlemen,

'I Cannot but take this Occaſion to return you My hearty 'Thanks, for the great Care and Concern you have 'ſhewn to promote every thing in this Seſſion, that may tend 'to the public Good.

'Gentlemen of the Houſe of Commons,

'I muſt thank you in particular for your having ſo fully 'complied with your Aſſurances to me, at the opening of 'this Parliament, that you would give all poſſible Diſpatch 'to the public Supplies. There is ſcarce any Inſtance to be given, where ſo great, and I hope, effectual Supplies, have been perfected in ſo ſhort a Time.

'I look upon this to proceed not only from your great 'Zeal for the public Service, but from a juſt Impreſſion 'upon your own Minds, that there is a neceſſity of making 'extraordinary Efforts, to ſupport and encourage our Allies, 'and to be early in endeavouring to diſappoint the Deſigns 'of our Enemies.

'My Lords and Gentlemen,

'It will be convenient to make a Receſs in ſome ſhort 'time, I hope therefore you will continue to give all Neceſ-'ſary Diſpatch to what may yet remain unfiniſhed of the 'public Buſineſs before you.'

An Account of the Regency-Bill.

The Lords having, by the Regency-Bill, entitled, *An Act for the better Security of her Majeſty's Perſon and Government, and of the Succeſſion to the Crown of England, in the Proteſtant Line*, repealed the Clauſe inſerted in an Act paſſed ſome Years before, for ſettling the Succeſſion, by which all Civil and Military Officers were made incapable to ſit or vote as Members of the Houſe of Commons, after her Majeſty's Deceaſe; and having ſent down that Bill to the Houſe of Commons for their Concurrence, the latter, who ſaw the Dike againſt the future Power, and Influence of the Court thrown down, reſolved in ſome Meaſure, to repair it, by admitting only 47 Civil and Military Officers into their Houſe; and amongſt them, ten Privy Councellors, five Flag-Officers, and as many Land-Generals. The Bill, thus amended, was ſent up again to the Lords, who made ſome Alterations to the Clauſe inſerted by the Commons, their Lordſhips excluding only the Commiſſioners of the Prize-Office, and all ſuch new Officers, as the Court might create for the time to come. Two Conferences were held about theſe reſpective Amendments, between the two Houſes; and the Report of the latter Conference being made in the Houſe of Commons, on the 15th Inſtant, the ſame occaſioned a long and warm Debate. 'The Court Party endeavoured to ſhew the In-

Debate about Civil and Military Officers.

juſtice of excluding from the Houſe, ſuch as were actually performing Service to the Nation: urging, that as all Counties,

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ties, and Corporations of England have by their Charters, liberty to elect ſuch as they thought beſt qualified to repreſent them in Parliament, they ſhould in great Meaſure, be deprived of that Liberty, by this Excluſion of ſeveral Officers Military and Civil, who, by Reaſon of the great Eſtates they had in thoſe Corporations, ſeldom fail'd, and had more Right than any others, to be choſen; and that the Excluſion of thoſe Officers would very much abate the noble Ardour which ſeveral Gentlemen ſhewed at this Juncture, to ſerve the Nation, in this juſt and neceſſary War; ſince they ſhould not but look upon it as a Diſgrace to be made incapable of ſerving likewiſe their Country in Parliament.' The oppoſite Party, which conſiſted of thoſe called High-Church Men, with whom not a few Low-Church Men joined, on this Occaſion, 'ſhewed the ill Uſe a bad Prince might make of a Parliament, in which there ſhould be many of his Creatures, ſuch as generally were all thoſe that had Employments immediately depending on the Crown; and their Arguments had ſuch Weight, that the other Party foreſeeing they ſhould loſe the Queſtion, agreed to the Poſtponing of three of the Lords Amendments, having already agreed to one of them.' But three days after, the Court Party being reinforced, by the return of thoſe, who for ſome time, had voted on the contrary ſide, the Lords Amendments were approved with ſome few Alterations, to which the Lords agreed, on the 19th.

The Queen's Anſwer to the Addreſs about Newfoundland.

The ſame Day, Mr. Secretary Hedges acquainted the Houſe, that their Addreſs relating to the Newfoundland Trade, having been preſented to the Queen, her Majeſty was pleaſed thereupon to ſay, 'That ſhe was fully ſenſible 'of the great Importance of the Trade and Fiſhery of New-'foundland, and would be very careful to encourage and 'protect it.' Two days after the Houſe of Commons, (according to order) proceed to take into further Conſideration the Accounts of the Revenues and Debts ever ſince her Majeſty's happy Acceſſion to the Crown; and reſolved, 'That it appeared to the Houſe, That the public Revenues granted, or ariſen ſince her Majeſty's happy Acceſſion to the Crown, had been duely applied to the happy Uſes, under a prudent Management, to the Advancement of the public Credit, and for the Advantage and Honour of the Nation.'

The public Revenues voted to have been duely applied.

On the 27th, the Commons read a third time, a Bill, Intitled, *An Act for naturalizing Vincent de Laymerie, and others*; and divided, upon the Queſtion, whether the Perſons naturalized by that Act, ſhould have Right to vote for Parliament-Men? Which was carried in the Affirmative, by a Majority of 169 Votes againſt 126; and ſo the Bill paſs'd that Houſe, as it did that of the Peers. The ſame Day, 'A Petition of the Gentry and Clergy of the South-parts of Lancaſhire,

caſhire, at their Monthly-Meeting, February the 12th, 1705, in the Borough of Wigan, for ſuppreſſing Prophaneneſs and Immorality, purſuant to her Majeſty's gracious Proclamation, and by and with the Biſhop of Cheſter, their Dioceſan's Allowance, offer'd jointly and unanimouſly to the honourable Knights, Citizens and Burgeſſes in this preſent Seſſions of Parliament, was preſented to the Houſe, complaining of ſeveral Grievances they labour'd under, from the Prieſts, Romiſh Gentry, and Popiſh Emiſſaries, and praying for Relief therein. And after the reading of this Petition, it was unanimouſly reſolved, 'That an humble Addreſs ſhould be preſented to her Majeſty, that ſhe would be pleaſed to iſſue out her Royal Proclamation for the putting in Execution the Laws which were in force againſt ſuch Perſons as had or ſhould endeavour to pervert her Majeſty's Subjects to the Popiſh Religion; and order'd, that a Bill be brought in for making more effectual the Act of the eleventh Year of his late Majeſty's Reign, *For the further preventing the Growth of Popery.*' This Bill was accordingly preſented the next day, by Sir James Montague, and read the firſt time.

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A Complaint againſt the Papiſts in Lancaſhire.

On the firſt of March the Commons gave it a ſecond Reading, and went through it in a grand Committee. By the Act of the eleventh Year of King William III. *For the further preventing the Growth of Popery*, it was provided, 'That all Papiſts ſhould, within ſix Months after they had reach'd the Age of eighteen, take the Oaths of Allegiance and Supremacy, or declare themſelves Proteſtants; in default whereof, their Eſtates were to go to the next Heir, being Proteſtants.' Now this Clauſe was ſo lamely expreſs'd, that the Roman Catholics found two Means to evade it. Firſt, there being in ſeveral Families, a Gradation of Age among the ſeveral Heirs to the ſame Eſtate, it happen'd, that though the Perſon that was come to the Age of eighteen, did not take the Oaths preſcribed by that Law, yet the Title of the Proteſtant-Heir remain'd undecided, as long as any next Popiſh-Heir was under Age. Secondly, (and this was the main Inconveniency) It lying, by that Clauſe, upon the next Heir to him, who, at the Age of eighteen, refuſed to declare himſelf a Proteſtant, to prove that he had not made the ſaid Declaration, it was impoſſible for the ſaid next Heir to prove ſuch a Negative. Now to make that Clauſe binding effectual, it was enacted, in this Bill, 'That all Papiſts or reputed Papiſts, ſhould within ſix Months after they had reach'd the Age of eighteen, not only declare themſelves Proteſtants, but prove alſo, that they had made ſuch a Declaration. On the 3d, when Sir James Montague was to report to the Houſe the Amendments made to the Bill by the Grand-Committee, the Duke of Norfolk (the Chief among the Roman-Catholics

A Bill to prevent the Growth of Popery.

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lics in England) petition'd, 'That he might be heard by his Council for Explanation of ſome Words in the Bill, and for ſuch Relief to him, as to the Houſe ſhall ſeem meet.' Upon the Reading of this Petition, the Commons order'd that the Duke of Norfolk be heard by his Council, as to his Property in the Office of Earl-Marſhal of England only: But his Council not being then ready, the Houſe heard Sir James Montague's Report, and then order'd the Bill with the Amendments to be engroſs'd. It's very remarkable, that this happen'd on a Saturday, with all which Proceedings the Roman-Catholics were ſtrangely alarm'd and confounded, as well they might; however, having the Opportunity of the Sunday to try what they could do to ward off the fatal Blow, they may heartily thank the Foreign Miniſters of their own Communion, for the Repreſentations made in their Behalf, who did not want Arguments to ſhew how ſuch a Law might be prejudicial to the Common-Cauſe, at ſuch a Conjuncture: Inſomuch that when the Bill came to be read the third time, on the 4th, which was the very next Day, ſeveral other Amendments were made to it: After which, the Queſtion was put, That the Bill do paſs? This occaſion'd a great Debate, wherein Colonel Godfrey, Mr. Boſcawen, and Mr. Aſgil, endeavour'd to ſhew the Injuſtice of ſuch a Law; urging, 'That the depriving Papiſts of their Eſtates, was almoſt as hard as taking away their Lives: That it would look as if they approv'd the Perſecution exercis'd by the French King, and other Catholic Princes, over their Proteſtant Subjects, if they ſhould imitate their violent Proceedings: And that this Act would certainly diſoblige the Roman-Catholic Powers in Alliance with us, ſome of whom, out of Reſpect to the Engliſh Nation, had lately ſhew'd ſome favour to their Proteſtant Subjects.' There was little ſaid againſt theſe Reaſons, and ſo the Bill was rejected, by a Majority of 119 Votes againſt 43.

The Method to put it off.

Arguments againſt the Bill.

The Bill rejected.

March 8, a Complaint was made to the Houſe of Commons of a printed Pamphlet entitled, A Letter from Sir Rowland Gwynne to the Right Honourable the Earl of Stamford; which was read at the Table, and ſome of the moſt remarkable Paſſages are as follow.

Sir Rowland Gwynne's Letter to the Earl of Stamford.

'My Lord, I did long ſince receive the Letter your Lordſhip was pleas'd to honour me with, of the 9th of November; and have hitherto delay'd returning any Anſwer to it, that I might with more Deliberation tell you my thoughts upon a matter of ſo great Importance.

'I did alſo expect, that ſome Friends would have diſcover'd to us the wicked Deſigns you ſuſpected to lie hid under the Advice to the Queen, to invite the Electoreſs over into England;

England; and ſhew'd us better Reaſons than I have yet ſeen, why they were not for it. Anno 5 Ann. 1705.

'But I muſt own, that I am hitherto at a loſs in this Matter, and not a little ſurpriz'd to ſee them act ſo contrary to the Opinion they were formerly of.

'The Occaſion of my laſt Letter to your Lordſhip, was to communicate to you a Letter writ by the Electoreſs to my Lord Archbiſhop of Canterbury, in anſwer to one that her Royal Highneſs had received from his Grace; wherein ſhe thought fit to declare her Reſpect for the Queen's Majeſty, and the good Intentions ſhe hath always had for the Good of England

'Her Royal Highneſs being informed, from ſeveral Perſons of Credit, that her good Inclinations for the Queen and the Nation, were miſrepreſented; ſome having reported, that ſhe did not think of England; others that ſhe might give ariſe to Intrigues againſt the Queen and the Public, if ſhe came thither:

'She thought herſelf therefore obliged to declare to my Lord Arch-Biſhop and others ſhe wrote to, and alſo to tell the Duke of Marlborough and the Earl of Sunderland, when they were here, that ſhe would always moſt ſincerely maintain a true Friendſhip with the Queen; and alſo be ready to comply with the Deſires of the Nation in whatever depends upon her, tho' ſhe ſhould hazard her Perſon in paſſing the Seas, if they thought it neceſſary towards the Eſtabliſhment of the Proteſtant Succeſſion, and for the Good of the Kingdom: But that, in the mean time, ſhe lived in great Quiet and Content there, (without meddling with Parties or Cabals) and left it to the Queen and Parliament to do whatever they ſhould think fit.

'I did therefore believe I ſhould pleaſe your Lordſhip by ſending you ſo deſirable a Declaration, by recommending you as a fit Perſon to be conſulted upon it, and by entreating you to communicate it to our Friends, being well aſſur'd of your Zeal for the Proteſtant Succeſſion, and Friendſhip for me.

'But I was very much ſurpriz'd when I found, by your Anſwer, that you did attribute her Royal Highneſs's Declaration, which was ſo neceſſary in itſelf, to the Artifices of the Jacobites.

'What, my Lord, would you then be pleaſed that the Electoreſs ſhould not think of England, and that the People ſhould believe ſo? or that ſhe would countenance Cabals againſt the Queen? Or ought one to be called a Jacobite for undeceiving the World of ſo groſs and wicked a Miſrepreſentation?

'The Electoreſs hath been often deſir'd to declare, that ſhe

Anno 5 Ann. 1705. was willing to come into England; but she never thought fit to give any Answer to it (further than she submitted herself and Family to the Pleasure of the Queen and Parliament) 'till she was press'd to declare, That she would not approve of the Motion to be invited to come over.

'This was such Advice that it gave her just Reason to suspect, that there were some secret Designs against the Succession, or at least tending to alienate the Affections of the People from her Person: And this was a further Reason for the Declaration she made, that she might not be misrepresented.

'Your Lordship farther tells me, That you will not dip in any thing of this kind, (I use your own Words, that I may not mistake your Meaning) which tends, in your Lordship's Opinion, to set up two Courts in England, in opposition to each other?

'Did I propose any thing to your Lordship but to do justice to Truth by making known to our Friends her Royal Highness's good Intentions? And can you complain of me for desiring a thing so just in itself, and which every honest Man ought to do? How then can your Lordship imagine, that this tends to set up two Courts in opposition to each other?

'It is plain, by the Electoress's Declaration, that she hath said nothing therein, either to desire her being invited over, or to hinder it; but she leaves all to the Queen and Parliament. I told you this and you seemed to take it ill, or at least otherwise than I intended it.

'Whoever did represent this to your Lordship as a thing that may disturb our present Quiet and future Peace, must be an Enemy to both.

'Do you think, my Lord, that the Electoress ought to declare, That she would not come into England? or that she herself should obstruct any Invitation that the Queen and the Parliament may give her? This might be taken as an Abdication of her Right to the Succession. But I can assure your Lordship, that she will not betray the Trust and Confidence the People of England have reposed in her, nor injure her Family.

'It is true, that she is much advanced in Years, and, according to the Course of Nature, may not live long; but the Elector and Prince-Electoral have many Years to come, in all appearance, and have Vertues that deserve the Crown of England, whenever it shall please God that the Reversion shall come to them.

'Can you approve of such Advice? Or can you think the Authors of it Friends to her, or her Family, or, which is more, Friends to England?

'Must we say, that those who speak against her, are her Friends;

Friends; and thoſe who ſpeak for her, are her Enemies? This ſeems to me to change the Name and Nature of things. Anno 5 Ann. 1705.

'When your Lordſhip conſiders what I have ſaid, and reflects upon it in your Heart, I doubt not, but you will ſee that you have been impoſed upon by thoſe who are Jacobites themſelves in their Hearts, or ſomething worſe, if it be poſſible, and certainly deſign to ſubvert the Proteſtant Succeſſion eſtabliſh'd by Law, or ſo to weaken it, that it may depend upon Accidents, or upon the Humour and Intereſt of particular Men: For none but ſuch can have the Malice to invent, and inſinuate to others, that the Preſence of the Succeſſor is dangerous.

'This is a thing that hath not been heard of in other Countries and is directly againſt Common-Senſe.

'This is a * new Paradox, which cannot be conceived in England, by any but thoſe, who are very weak, or corrupted.

'We ought to maintain the contrary; ſince we know that we have ſecret and dangerous Enemies at home, and an irreconcilable and powerful Enemy abroad, who may have both the Will and the Power to hinder the Paſſage and Eſtabliſhment of the Succeſſor, at the time when it may be moſt neceſſary; and totally thereby to ſubvert our Conſtitution, if it does not pleaſe God once more, to preſerve us by his manifeſt Providence.

'You go on, my Lord, and deſire that I would adviſe the Electoreſs to take care that ſhe is not impoſed upon by the Jacobites: But this Caution is very unneceſſary; for I can aſſure you that her Royal Highneſs does not conſult them in any thing, and much leſs will ſhe do it in what relates to the Succeſſion: For if ſhe did, ſhe muſt act againſt all Rules of good Reaſon and Senſe.

'You may ſay that they are Jacobites who give theſe Advices: But her Royal Highneſs did not want any Advice to expreſs and declare herſelf, as ſhe hath done, in a manner ſo ſuitable to her former Conduct.

'If we will ſuppoſe that this proceeds from the Jacobites, we muſt, at leaſt, think that it is for their Intereſt.

'But can you believe, my Lord, that it is, in any manner, for their Intereſt to perſuade the Proteſtant Succeſſor to declare her Eſteem and Affection for the Queen and Nation? And yet this is all that her Royal Highneſs hath expreſs'd in her Letter to the Lord Arch-Biſhop.

'Such Jacobites muſt be very ſilly, and not to be fear'd, who ſhould adviſe that which muſt deſtroy all their Hopes. For the Electoreſs's Declaration was to take off all the groundleſs Suſpicions, to unite all honeſt Men and to ſecure our Conſtitution:

* *If Sir Rowland had recollected the Conduct of Q. E. on a like Occaſion he would have hardly called this a new Paradox.*

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ſtitution: And therefore your Lordſhip, and all our Friends, ought to have deſired her Royal Highneſs to explain herſelf after this manner; and all that wiſh well to their Country, ought to thank her for having done it.

'We Whigs would have been formerly very glad to have ſeen ſuch a Declaration from her Royal Highneſs. I pray then, my Lord, judge what Opinion the Electoreſs ought to have, at preſent, of our Steadineſs and Principles, if ſhe ſhould receive Advice from us, ſo contrary to what ſhe ought to have expected.

'But I do not apply this to your Lordſhip: For I am perſuaded that you will be one of the firſt that will quit this Miſtake, and condemn the ſtrange Notions that have been impoſed upon you by others.

'We have been proud to ſay, that the Houſe of Hanover, the People of England, and our Poſterity, were moſt obliged to the Whigs, next to the King, for ſettling the Succeſſion upon that moſt Serene Houſe: And how much ſhould we be to be blamed, if we ſhould loſe this Merit, by parting with our Principles, that were ſo well grounded upon Honour, and the public Good; and by deſtroying the Work of our own Hand, for a baſe and uncertain Intereſt; or for a blind Obedience to thoſe, who lead others where they pleaſe, and yet are led themſelves by their Paſſions, or imaginary Proſpects, of which they may be diſappointed?

'For if they hope to get into Favour by ſuch Methods, they cannot be long Serviceable nor preſerve the Favour they ſeek; for they will ſoon be caſt off, when it is found that they have loſt the Eſteem and Affection of the People, by their weak or mercenary Conduct.

'They cannot do any thing that will better pleaſe their Enemies; for, while they think to keep down the Tories by a Majority, and oppoſe them, even in things ſo reaſonable and juſt; they will raiſe their Reputation, inſtead of leſſening it.

'If others think fit to quit their Principles, yet I will never part with Mine; for I am ſtill of the ſame Opinion that the beſt Engliſhmen profeſs'd themſelves to be of, in the late King's time; and I find no reaſon for any honeſt Man to change.

'I am ſorry for thoſe who ſuffer themſelves to be impoſed upon; but they who have wicked Deſigns, may one Day repent of them. And I will be bold to ſay, that they muſt either plunge the Nation in the greateſt Confuſion to make it unable to puniſh them; or that they will be anſwerable for the Dangers into which they are like to bring it.

'Thoſe who betray their Country, will have little Satisfaction or Aſſurance of enjoying their hoped-for Advantages, which will be embitter'd by their Guilt, and the perpetual Appre-

Apprehenſions they will have; and nothing but a timely Death can deliver them from being puniſh'd as they deſerve; whether the Nation continues to flouriſh, and eſcapes the Deſigns laid to enſlave it, or whether it be ruin'd by Popery and Tyranny; which may happen by their artful Conduct, in making us neglect our own Safety. Anno 5 Ann. 1705.

'For if Tyranny and Popery prevail, many of them will ſuffer under the French and Jacobite Cruelties, which will not be leſs, than thoſe we have read of in Queen Mary's time; and they, that may think themſelves the moſt ſecure among us, will be happy if they can ſave only their Lives.

'So terrible a Revolution is, perhaps, more to be apprehended, than People think.

'But if it does not happen at preſent, yet it may come to paſs, even in the Life-time of thoſe who believe they may contribute towards it with Impunity.

'They themſelves may feel thoſe Miſeries which they would carry down to Poſterity, and even to their own Children, if they have any; and this only to ſatisfy their own preſent Paſſions, at the Expence of their Country, and contrary to their Duty both to God and Man.

'Theſe, my Lord, are the Sentiments and Meaſures that are wicked in themſelves, and that we ought to abhor; and not the Thoughts of endeavouring better to ſecure the Proteſtant Succeſſion, by having the next Heir of the Crown in the Kingdom.

'But your Lordſhip is told, that the coming of the Electoreſs into England, will ſet up two Courts, that will oppoſe each other.

'I cannot conceive how any body could tell you ſuch a thing, or what colour they cou'd have for ſo baſe an Inſinuation.

'For the Electoreſs declares, 'That ſhe will be entirely united with the Queen; and that all thoſe, who imagine ſhe will countenance any Intrigues againſt her Majeſty, will be very much deceiv'd in their Expectations.' Yet, notwithſtanding, it ſeems there are ſome People, who endeavour to perſuade your Lordſhip, that even this ſincere Declaration tends to raiſe Confuſion.

'Is not this, in plain terms, to contradict what the Electoreſs hath ſaid, and to put an Affront upon this great Princeſs, and your Lordſhip, as well as upon all others, who have had the Honour to converſe with her Royal Highneſs, and muſt have done her juſtice?

'The World knows that ſhe is a Princeſs, whoſe natural Temper is generous, and obliging, and ſincere, and of a public Spirit.

'Are not you, my Lord, then obliged as much as any Man

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Man living, boldly to contradict theſe malicious Calumnies which you know to be falſe, to ſet them right who are miſinform'd, and to oppoſe thoſe who endeavour to impoſe upon others?

'But let us ſuppoſe what you ſay, and allow, that (contrary to all appearance) diſcontented or ill Men may impoſe upon the Electoreſs's Good-nature, and incline her to do ſuch things, as may diſpleaſe the Queen.

'What hurt can that do? Since her Royal Highneſs's Court can have no Power in England, and muſt be ſubject to the Queen's Court, who is the Sovereign.

'I will not touch upon things that have paſs'd in our time, and confirm what I ſay.

'So that it is moſt abſurd, to make People believe, that this pretended Oppoſition of the two Courts, can bring us into ſo great Dangers, as thoſe we may avoid, by having the Proteſtant Heir in the Kingdom. Let us, in the mean time, examine theſe Pretences, how abſurd ſoever.

'If we will keep the next Proteſtant Heir at a diſtance, it muſt be allowed to be grounded upon two Suppoſitions: Firſt, that the Queen is againſt the Electoreſs's coming over; and Secondly, that her being in England during the Queen's Life, is a thing ill in itſelf.

'Theſe two Propoſitions are wicked and criminal in themſelves: For to ſay, that the Queen would take away, from the preſumptive Heir, the right of coming into England, is to caſt a great Reflection upon her Majeſty, and to create a miſunderſtanding between her Majeſty, and the Perſon in the World ſhe ought to be moſt united with.

'But to maintain, That the Electoreſs's being in England, is ill in itſelf; one muſt declare himſelf to be of a moſt ridiculous, or of a moſt malicious Opinion. For either it muſt be a general Rule, that the Succeſſor muſt be always kept out of the Kingdom: Or, it muſt be ſuppoſed, that the People have juſt Reaſon to entertain ſome juſt Notion in Prejudice to the Electoreſs. But the general Rule is, abſolutely, not to be maintain'd. There is neither Law nor Example to juſtify it.

'For if it were ſo, then her Majeſty, when Princeſs of Denmark, muſt have been ſent out of the Kingdom; and yet no Man ever pretended to broach ſo traiterous an Opinion.

'And all the World knows, that the Electoreſs may come over whenever ſhe pleaſes, without being invited.

'All wiſe Princes and Governments, that have had a Succeſſion, have ever thought, that the ſecuring of that Succeſſion, was a preſent and great Security to the public Safety; without conſidering whether there ſhould ariſe any real or imaginary Diſputes between the Sovereign and the next Heir.

'And

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'And I alſo hope that our Friends will never pretend to have any Reaſon to inſinuate, That they ought to have any Jealouſies of the Electoreſs, as to her own Perſon.

'For People muſt be very malicious to ſay, or very ill inform'd to believe, that ſhe is weak or diſaffected, that ſhe loves Diviſions, or that intriguing Perſons can manage and turn her at their Pleaſure.

'You know, my Lord, that ſhe is infinitely above theſe Characters.

'That ſhe is wiſe, and hath the greateſt Tenderneſs in the World for her Relations, and particularly for her Majeſty.

'That ſhe is charitable to all Men, a Friend to Engliſh Liberty; and ſo knowing, that ſhe cannot be eaſily impoſed upon. All thoſe who are acquainted with her, ought to believe, that the Queen would be well pleaſed with her agreeable Temper and Converſation.

'Her moderate Behaviour hitherto ought to aſſure us of the Continuance of it for the time to come.

'Her quiet Temper, her Zeal for our Preſervation, and her Eſteem for the Queen, have made her not comply with the Advice of ſome, who called themſelves Whigs; which might have given Offence, if ſhe had follow'd them.

'If, after all this, People can think, that her Preſence in England can be any Prejudice to the Queen or Kingdom, they muſt be very ungrateful.

'And it is no leſs injurious to her Character to miſrepreſent the publiſhing a Letter, that was ſo judiciouſly writ, and ſo neceſſary, at this time, to ſuppreſs theſe groundleſs Reports.

'This Letter, which I ſent to your Lordſhip, was only to confirm what ſhe had ſaid to Mr. Howe, who is the firſt of the Queen's Miniſters that have come to this Court, that hath owned he had orders to declare to her Royal Highneſs the Queen's good Intention, further to ſecure the Succeſſion in her Royal Highneſs's Family.

'So that no body can ſay, that ſhe hath done any thing at preſent, but what came from the Queen herſelf.

'It alſo appears, that it is a moſt skilful and malicious Contrivance of ſome, to cry out, Jacobitiſm; as ſoon as any body they do not like, ſpeaks of inviting over the preſumptive Heir

'Thoſe who are ſincerely for ſo proper a Method to ſecure the Succeſſion, ought to take the Advantage of joining in this Point with all whoever are for it, let their Character be what it will.

'For when Men mean well, they will thoroughly purſue their Point, and conſider the nature of things as they really are in themſelves.

'If

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'If those whom you suspected to have had wicked Designs, were not sincere in shewing their Zeal to invite the presumptive Heir, we ought to have taken them at their word; and by this means they had been punish'd as they deserv'd, by being catch'd in their own snare.

'Then the Crown might have been join'd with the Church, in an excellent Address to the Queen, and both voted out of Danger.

'May the Judgment, Honour and Candour of our Friends, never be called in Question by our own, and other Nations; for their very visible Mistake, in losing this great, and, perhaps, irrecoverable Opportunity they had to oblige their Country for ever.

'If the Motion to invite the Successor could be of any use to the Jacobites, it must be because it was not receiv'd

'Ought a good thing to be disapprov'd, because a Man I suspect, or do not love, proposes it?

'If we maintain this Position, we shall put it into the power of the Jacobites, to hinder any good Resolution we can desire to take; for it will be enough, if any one we call a Jacobite, seems to agree with us.

'It is a shame that we should be imposed upon by such weak and malicious Notions.

'In short, to oppose the further securing of the Protestant Succession, is to act directly for the Jacobites; and to hinder the Successor's coming into England, is to oppose the further securing of the Succession, in my humble Opinion.

'The Succession and England are in great Danger from the present Conjuncture of Affairs.

'The Success of the present War, which is, as yet, very uncertain, will have the greatest Influence on this Subject.

'Our Constitution does not allow of a standing Army in time of Peace, though we have a formidable Neighbour, who hath always a Will, Power and Pretences to surprize us, whether we are in Peace or War with him, if we are not ever upon our Guard: And he aims at no less, than to subvert our Religion, Liberty and Property.

'Under such Circumstances, we ought to think of all possible means to secure ourselves against a Deluge of Blood, and an universal Confusion.

'The Subversion of our Constitution is much to be apprehended; if it should so unfortunately fall out, that there should be a Demise; and the Successor, being absent, should not be in a Condition to pass the Seas, while the Enemy may have time to prevent all our good Measures.

'It is certain, that those, who are not sensible of the Consequences, that may attend our Negligence, and the Malice of

* *Our Constitution, it seems, is greatly altered since the writing this plausible Letter.*

of our Enemies, on ſuch an Occaſion; muſt either be cor- Anno 5 Ann.
rupted, or very indifferent, as to the Safety of their Country. 1705.

'Therefore it is neceſſary, that the preſumptive Heir ſhould be always eſtabliſh'd in England: And it would be better husbandry, to make an honourable Proviſion for him ſuitable to what was ſettled in the late Reigns; than to be at the Charge of a War, to recover his Right, and our own Liberties, from the Dangers which they then may be in. This may ſave us great Sums, which we may be oblig'd to lay out, to bring him over; and yet, perhaps, we may not have the Succeſs we deſire.

'We may well remember, that the Nation paid Six Hundred Thouſand Pounds for the Expence of the Prince of Orange's Expedition to deliver us from the Danger our own Folly had brought us into: And yet it was a hundred to one, that he ſucceeded, tho' ſo many Men of Quality and Intereſt, both in Church and State, did appear for him.

'But the Expence of Money is the leaſt Evil that our Negligence may bring upon us: Since our Religion, Lives, and Liberties, and all are at Stake.

'Your Lordſhip further ſays, that the Court was threaten'd laſt Seſſions with this Motion, and dared with it ever ſince the Parliament was choſe; and that it is your Opinion, that the Electoreſs ſhould not give any further Countenance to it.

'I uſe your Lordſhip's own Words, and do aſſure you, that the Electoreſs hath not meddled with, nor countenanced any Deſign, otherwiſe than appears in her Letter to my Lord Archbiſhop; having had no Knowledge of what was to be propoſed in her Favour before the Motion was made.

'But ſince you had ſuch early notice of this Deſign I do the more wonder, that this Motion was not made by thoſe who belong'd to the Court: Since it is moſt manifeſtly for her Majeſty's Intereſt, as well as that of the Nation, that the preſumptive Heir ſhould be eſtabliſh'd in England.

'You could not then have had a Pretence to complain, that it came from Men you did not like; and we have no Reaſon to think that it would not have been agreeable to the Queen, if the whole matter had laid before her Majeſty, who does every thing that can be adviſed for the Good of Europe and of her own Subjects.

''Tis a ſtrange Notion, to think, that the Preſence of the Succeſſor can ruin the Succeſſion.

'And it is very unlikely, and not to be ſuppoſed, that the Succeſſor (at leaſt any of thoſe we have in this Family, who have a true Reſpect and Love for the Queen, and true Honour and Virtue in themſelves) will ever be a Cauſe of Confuſion in England, by his Preſence; This muſt be invented by thoſe, who ought to be as much ſuſpected as any, by all, who are for the Proteſtant Succeſſion: And it carries ſo much

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Malice and Wild-fire in it, that I am afraid to touch it any more.

'As to the other Methods propoſed in the Houſe of Lords, for the better ſecuring of the Succeſſion: tho' I have all the Deference in the World for their Lordſhips, as well as for the honourable Houſe of Commons; yet I am perſuaded (with great Submiſſion) that the Parliament will yet think, ſuch Meaſures not ſufficient for theſe Ends, and will, in time, conſider of others more effectual.

'We hear from England, That the Laws have been conſidered which relate to the Adminiſtration of the Government, in caſe a Demiſe ſhould happen during the Abſence of the Succeſſor; and that they are found defective.

'This may well be, for neither our Anceſtors nor we did ever imagine, That any good Engliſhman would oppoſe the Eſtabliſhment of the rightful and lawful next, or preſumptive Proteſtant Heir in the Kingdom; but that he ſhould be ready at hand to ſupport the Conſtitution, whenever the Succeſſion came to him.

'And this is more neceſſary at preſent, than ever; ſince there is a Pretender ſupported by France, who uſurps the Stile and Title of King of England to her Majeſty's great Diſhonour, and Danger of the Proteſtant Succeſſion.

'As for the Act to ſecure the Queen's Perſon and Government, &c. the Powers which the Lords Juſtices are to have, for the time being, muſt be very great; and may be liable to bring Dangers, if not Ruin to the Kingdom, if they ſhall happen to fall into the Hands of ill Men.

'The Heir being kept at a Diſtance will not be able, in time of Danger and Confuſion to diſtinguiſh his Friends from his Enemies; ſince he will not be acquainted with the Nobility and Gentry, whom he would have known if he had been in the Kingdom: And therefore will be under great Difficulties how to name proper Perſons to join with the ſeven Lords-Juſtices.

'Beſides, it is very doubtful how far his Orders and Choice will be reſpected; for many Pretences and Meaſures may be put in practice by a powerful Skill to elude them.

'Who can ſay what Men will be in the great Employments, when a Demiſe may happen?

'Thoſe we think the beſt Friends to the Succeſſion may die before that time comes; and thoſe whom we call Jacobites, or others who are ſuch in their Hearts, without being known, may yet come into thoſe Employments

'The Power of the Nation both by Sea and Land, and even the Treaſure, may be in ill Hands; and if this happens, they may diſpoſe of the Crown and Succeſſion as they pleaſe.

'One ſingle Perſon may uſurp the Power of all the Lords-Juſtices and Council, as it did fall out in Edward the VIth's time

time, by the Subtlety of the Duke of Northumberland to the great Prejudice of your Lordſhip's Family. Anno 5 Ann. 1705.

'And this hath often happen'd, both in England, and other Countries, tho' Criminals have been frequently puniſhed.

'But ſuch Circumſtances may be more dangerous in England at preſent, than People thought them in former Ages.

'The happy Criminals are always applauded, far from being puniſh'd.

'Such a ſingle Perſon at ſuch a Conjuncture may chuſe to play the Game of Cromwell, or that of Monk, for the falſe, or for the true Heir.

'And the time may come, in which the Pretender with the great foreign Power, and the Intrigues within the Kingdom may be able to gain more People than the Succeſſor, being abſent and deſtitute of the neceſſary Supports eſpecially after the Diſſolution of the great Alliance, which may juſtly be apprehended in time of Peace; as it did happen after the Treaties of Nimeguen and Ryſwick, and as it is very like to fall out again after this War; if more effectual Meaſures are not taken in the Kingdom as well as Abroad. And if the Allies do not find their Security in our Conſtitution, and in the Succeſſion.

'The Lords have made an excellent Addreſs to the Queen, to maintain a good Intelligence with the Allies and particularly with the States-General.

'But it is to be wiſh'd that this good Intelligence may be ſo extended, and that ſuch Meaſures may be taken, that we may be always certain of their Aſſiſtance to ſecure the Proteſtant Succeſſion.

'England and the States are the great Support of the Proteſtant Religion and Intereſt, and of the Liberties of Europe. 'Tis undoubtedly the Intereſt and Safety of both, always to maintain a good Correſpondence and true Friendſhip. Therefore the wiſe and honeſt Miniſters on both ſides will eaſily find the moſt proper Means to prevent any Quarrel, and will preſerve a perfect Union, which muſt be grounded upon the Obligation and Neceſſity of each others mutual Defence.

'England may, and ought to depend upon its own Wiſdom and Force, to defend itſelf; being ſecured and quiet at home.

'And we have had hitherto the good Fortune to preſerve our Liberties, when moſt other Nations have loſt theirs.

'But late Experience has ſhewn us how near we may come to Slavery by our Negligence And alſo, how neceſſary it may then be to recur to, and how dangerous to rely upon foreign Aid, as to our own Safety.

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'We can be in no Danger under her Majesty's Reign, and wise Conduct.

'But we are to apprehend and prevent, to the utmost of our Power, any ill Accidents, that may befal us, when it may please God to take our good Queen from us

'Who knows what Men or Parties may rise up at home and abroad? We ought, therefore, like honest and wise Men, to set things upon the best and surest Foundations. At least we ought not to weaken the Succession, by neglecting the proper Means for its Security.

''Tis true, that the Invitation of the presumptive Heir hath no Negative put upon it: But it is also true, that if it had pleased our Friends in Parliament at this time, when they were a Majority to advise her Majesty to it, in Concurrence with others; that this would have better secured the Protestant Succession, and our Constitution, than all the Laws the Nation can make.

'I pray, my Lord, what will our Acts of Parliament, our Oaths, the Proclamation of the Successor, and even our Lords Justices signify, if the Successor is not certain of passing the Sea, and of being possessed of the Fleet, the Troops, the Treasure, the Garrisons, the Sea-Ports, the Tower, and the City of London?

'The World will wonder at, and we shall deplore our fatal Blindness; if we are capable of being amused by imaginary Securities, and neglect, at this time of day, what is really necessary for our Safety.

'Laws are no more than Cobwebs against Power and Force.

'The History of England doth furnish us with many Examples, which shew that the next Heirs to the Crown have been often excluded from the Succession to it, by their being absent at the time of the Demise.

'We have an Instance now before us in Spain, which hath cost us much Blood and Treasure, and is like to cost us much more; besides, what England doth, and may suffer by the Loss of that Trade, which was next to that of our West-Indies, the most profitable to us.

'For if King Charles had been in Spain before the Death of the late King, it might, in all Probability, have prevented this General War; and the French King would never have attempted the Conquest of Spain, if he had not had Footing there before; nor the Spanish Ministers have dared to do what they did, if the Arch-Duke had been present at Madrid.

'Therefore to hinder the next Heir's coming into England, will be a very great Reflection upon us: For it must tend

tend to the Deſtruction of, or at leaſt, very much hazard our Religion and Liberties. Anno 5 Ann. 1705.

'And ſo we ought to conſider of our Dangers in due time; ſince it may ſo happen, That it may not be in our Power to ſecure the coming over of the Succeſſor: And I will only mention what has been ſaid in England, that we are not always ſure of a proteſtant Wind.

'A thouſand other Accidents may befal us, if we truſt to the laſt Extremity.

'Therefore we ought now to take right Meaſures, That the Succeſſor may be always eſtabliſhed, and ſure to poſſeſs himſelf of the Power, whenever it ſhall pleaſe God to afflict us with a Demiſe: And that we may be as little expoſed as is poſſible, either to Chance or Treachery.

'The Queen ſeems to be of this Opinion, and all honeſt Men ought, and will contribute all they can to make it agreeable and eaſy to her Majeſty.

'The Electoreſs, and the other Princes of this Family, do always praiſe and admire the Care that the Queen takes of the Intereſt of Europe againſt our Common Enemy; and pray for her Majeſty's long Life and Happineſs.

'God be thank'd the Queen is in good Health, but, alas! She is mortal, and muſt our Safety depend upon an Accident, that muſt befal the beſt of Mankind?

'It is true, that the Electoreſs hath many Years more than her Majeſty, and that the Queen is in the Vigour of her Age; and therefore, that the Electoreſs is not like to ſurvive her Majeſty; but our Intereſt and Safety conſiſts in making ſuch Proviſion once for all, whether the Electoreſs lives or not, that the next Heir may be always preſent, or in a Condition to be ſo; without which, in my humble Opinion, we cannot be ſafe, otherwiſe than by an extraordinary Providence.

'My Lord Haverſham hath always ſhewed himſelf ſo true a Friend to this Family, and the Conſtitution of England; that I thought no Man could be more proper to be adviſed with upon the Electoreſs's Letter.

'I ask your Lordſhip's Pardon for troubling you with ſo long a Letter; but I thought myſelf obliged in Duty to my Country, and Friendſhip to you, to ſpeak plainly upon this Queſtion, which contains the Happineſs or Miſery of England: And therefore I hope that all wiſe and honeſt Men will take care how they decide it. I am

My Lord,

Your Lordſhip's moſt Obedient

And moſt Humble Servant.

R. GWYNNE.

Hanover, Jan.
1ſt Old-Stile.
12th New-Stile. } 170⅝.

After

Anno 5 Ann. 1705.

Cenſure paſs'd upon it.

After the reading of this Letter, the Commons reſolv'd, 'That it was a ſcandalous, falſe and malicious Libel, tending to create a Miſunderſtanding between her Majeſty and the Princeſs Sophia, and highly reflecting upon her Majeſty, upon the Princeſs Sophia, and upon the Proceedings of both Houſes of Parliament; that an humble Addreſs ſhould be preſented to her Majeſty, That ſhe would be pleaſed to give Order for the Diſcovery and Proſecuring the Author, Printer and Publiſhers of the ſaid Pamphlet, and that the ſaid Reſolutions ſhould be communicated to the Lords at a Conference, and their Concurrence deſir'd thereunto.' Their Lordſhips not only readily concurr'd with the Commons on the 11th, but likewiſe agreed upon an Addreſs to be preſented to her Majeſty, purſuant to the ſaid Reſolutions; to which Addreſs they deſired the Concurrence of the Commons, who heartily joined with them, and ſo the next day, both Houſes preſented the following Addreſs to the Queen:

Addreſs of both Houſes to the Queen, about Sir Rowland Gwynne's Letter.

'We your Majeſty's moſt dutiful and obedient Subjects, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, beg leave to acquaint your Majeſty, That, having taken into ſerious Conſideration a printed Pamphlet, entitled, *A Letter from Sir Rowland Gwynne, to the Right Honourable the Earl of Stamford*, We came to the following Reſolution.

'That the ſaid Pamphlet is a ſcandalous, falſe and malicious Libel, tending to create a Miſunderſtanding between your Majeſty, and the Princeſs Sophia, and highly reflecting upon your Majeſty, upon the Princeſs Sophia, and upon the Proceedings of both Houſes of Parliament.

'May it pleaſe your Majeſty, This ſeditious Libel having been, of late, with great Induſtry diſpers'd among your Subjects, we humbly beſeech your Majeſty to give ſtrict Orders for the Diſcovery of the Author, Printer and Publiſhers thereof, to the end they may be brought to condign Puniſhment, according to the utmoſt Rigour of the Law. And we pray your Majeſty to uſe all Means, which ſhall ſeem proper to your Royal Wiſdom, for preventing ſuch inſolent and dangerous Attempts for the future.

To this Addreſs, the Queen was pleaſed to give the following Anſwer:

The Queen's Anſwer.

'My Lords and Gentlemen, Nothing can be more acceptable to me, than ſo ſeaſonable an Inſtance of your Concern to preſerve a good Underſtanding between me and the Princeſs Sophia, and of your Care to defeat the Artifices of deſigning and malicious Men.

'I am fully ſenſible of the very ill Deſign of the Paper, which you have ſo juſtly cenſured, and I will not fail to give the neceſſary Directions for complying in the moſt effectual Manner with all you deſire in your Addreſs.'

There

There being, at this Juncture, no leſs, than about 12000 Seamen wanting to Man her Majeſty's Navy, both the Lords and Commons took, ſeverally, that weighty Affair into Conſideration, and after ſome time ſpent therein, the Commons came to theſe Reſolutions: 1ſt, 'That, in order to the ſpeedy and more compleat manning of her Majeſty's Navy for the Year 1706. the Juſtices of Peace, and other Civil Magiſtrates throughout the ſeveral Counties, Ridings, Cities, Towns and Places, within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, be empower'd, and directed forthwith to make, or cauſe to be made, ſtrict and diligent ſearch for all ſuch Seamen, or Sea-faring Men, as lie hid, and are not in her Majeſty's ſaid Service. 2dly, That the ſaid Juſtices, and other Civil Magiſtrates, do take up, ſend, conduct and convey, or cauſe to be taken up, ſent, conducted and conveyed, all ſuch Seamen or Sea-faring Men to be deliver'd to ſuch Perſons as ſhall be appointed to receive the ſame. 3dly, That a Penalty be inflicted upon every Perſon who ſhall preſume to harbour or conceal ſuch Seamen or Sea-faring Men. 4thly, That a Reward be given to every Perſon who ſhall diſcover and take up ſuch Seamen, or Sea-faring Men, as aforeſaid the ſame to be diſtributed and paid to every ſuch Diſcoverer or Perſon ſo taking up ſuch Seamen or Sea-faring Men reſpectively, out of the Money given for the Service of the Navy. 5thly, That Conduct-Money be allowed for conveying and ſubſiſting ſuch Seamen and Sea-faring Men, according to the preſent Uſage of the Navy. 6thly, That, for the Encouragement of the ſaid Service, every Seaman who ſhall be turn'd over from one Ship to another, ſhall be paid his Wages, which ſhall appear to be due to him in the Ship from which he was turn'd over, before ſuch Ship to which he ſhall be turn'd over do go to Sea, either in Money, or by a Ticket, which ſhall entitle him to an immediate Payment. 7thly, That ſuch able-bodied Landmen, who are liable to be raiſed for the recruiting her Majeſty's Land-Forces and Marines, be raiſed for the ſaid Service, in the like manner, and delivered to ſuch Perſons who ſhall be appointed to receive the ſame: And order'd, that the Committee to whom the Bill for the Encouragement and Encreaſe of Seamen, and for the better and ſpeedier manning her Majeſty's Fleet, and for making Proviſion for the Widows and Orphans of all ſuch as ſhall be ſlain, or drowned, in her Majeſty's Service, and for the Support of Trade, is committed, have power to receive a Clauſe or Clauſes purſuant to the ſaid Reſolutions: And that it be an Inſtruction to the ſaid Committee, that they have power to receive a Clauſe for diſcharging of ſuch Seamen, and other inſolvent Perſons, as are in Priſon for Debt, and delivering them into her Majeſty's Service on board the Fleet.'

Votes about the beter manning of the Fleet.

This

Anno 5 Ann. 1705.

This was perfected, and paſs'd both Houſes in four Days; and the Lords and Commons having, after ſeveral Conferences, agreed upon the Bill, entitled, *An Act for the Amendment of the Law, and the better Advancement of Juſtice*, the Queen came to the Houſe of Peers on the 13th, and the Commons being ſent for up, her Majeſty gave the Royal Aſſent to the following ſeventeen public Acts, *viz.*

Queen paſſes Acts.

1. *An Act for laying further Duties on Low Wines, and for preventing the Damage to her Majeſty's Revenue by Importation of foreign-cut Whalebone, and for making ſome Proviſions as to the Stamp Duties, and the Duties on Births, Burials and Marriages, and the Salt Duties, and touching the Million Lottery Tickets, and for enabling her Majeſty to diſpoſe of the Effects of William Kidd, a notorious Pirate, to the Uſe of Greenwich Hoſpital, and for appropriating the public Moneys granted in this Seſſion of Parliament.* 2. *An Act for the better Security of her Majeſty's Perſon and Government, and of the Succeſſion to the Crown of England in the Proteſtant Line.* 3. *An Act for repairing the Highways between Barnhill and Hatton Heath in the County of Cheſter.* 4. *An Act for the better enabling the Maſter, Wardens and Aſſiſtants of Trinity Houſe, to rebuild the Light-Houſe on the Edyſtone Rock.* 5 *An Act for the better ordering and governing the Watermen, and Lightermen, upon the River of Thames.* 6. *An Act for enlarging the Pier and Harbour of Parton, in the County of Cumberland.* 7. *An Act for the paying and clearing the ſeveral Regiments commanded by Lieutenant-General Stewart, Colonel Hill, and Brigadier Holt, and for ſupplying the Defects of the Muſter-Rolls of theſe, and ſeveral other Regiments.* 8. *An Act for the better collecting Charity-Money on Briefs by Letters-Patent, and preventing Abuſes in relation to ſuch Charities.* 9. *An Act for the Increaſe and better Preſervation of Salmon, and other Fiſh, in the Rivers within the Counties of Southampton and Wilts.* 10. *An Act for the better recruiting her Majeſty's Army and Marines.* 11. *An Act to empower the Lord High Treaſurer, or Commiſſioners of the Treaſury, to iſſue out of the Moneys ariſing by the Coinage-Duty, any Sum not exceeding Five Hundred Pounds over and above the Sum of Three Thouſand Pounds yearly, for the Uſes of the Mint.* 12. *An Act for continuing An Act made in the Seſſion held in the Third and Fourth Years of her Majeſty's Reign, entitled, An Act for puniſhing Mutiny, Deſertion, and falſe Muſters, and for the better Payment of the Army and Quarters.* 13. *An Act for raiſing the Militia for the Year One Thouſand Seven Hundred and Six, notwithſtanding the Month's Pay formerly advanced be not repaid, and for an Account to be made of Trophy-Moneys.* 14. *An Act to enlarge the time for regiſtering unſatisfied Debentures upon the forfeited Eſtates in Ireland, and for renewing of other Debentures which have been burnt, loſt or deſtroyed.* 15. *An Act for the Encouragement and Increaſe of Seamen, and for the better*

and

and ſpeedier manning her Majeſty's Fleet. 16. *An Act to prevent Frauds frequently committed by Bankrupts.* *And,* 17. *An Act for the Amendment of the Law, and better Advancement of Juſtice*; As alſo to an *Act for naturalizing Vincent de Laymerie, and others*, and to 52 other private Bills: After which her Majeſty made the following Speech to both Houſes. Anno 5 Ann. 1706.

'My Lords and Gentlemen,

'BEing now come to a Cloſe of this Seſſion, I am to return you my Thanks for having brought it ſo ſpeedily to a good Concluſion; eſpecially for the wiſe and effectual Proviſion made to ſecure the Proteſtant Succeſſion in this Kingdom, and the great Advances on your Part, towards procuring the like Settlement in the Kingdom of Scotland, and a happy Union of both Nations.

'I am very well pleaſed likewiſe with the Steps you have made for the Amendment of the Law, and the better Advancement of Juſtice.

'I muſt again repeat to you, Gentlemen of the Houſe of Commons, that I am extremely ſenſible of the Diſpatch you have given to the public Supplies; I aſſure you I will be very careful that they may be applied, in the moſt effectual Manner, for our Common Intereſt.

'My Lords and Gentlemen,

'At the Opening of this Parliament, I recommended, with great Earneſtneſs, an entire Union of Minds and Affections among all my Subjects, and a ſincere Endeavour to avoid and extinguiſh all Occaſions of Diviſions and Animoſity; I am much pleaſed to find how entirely your Sentiments have agreed with mine. Your Unanimity and Zeal, which I have obſerved, with great Satisfaction, throughout this whole Seſſion, againſt every thing that tends towards Sedition, doth ſo much diſcourage all ſuch Attempts for the future, and hath ſet ſuch an Example to the whole Kingdom, that, when you are returned into your ſeveral Countries, I doubt not but you will find the Effects of it every where, and I aſſure myſelf you will make it your Buſineſs and Care to improve and perfect that good Work you have ſo far advanced here; and by continuing to ſhew a juſt diſlike of all Factions, and turbulent Proceedings, and reſolved to diſcountenance the Encouragers of them, you will ſoon make the whole Kingdom ſenſible of the good Effect of ſo prudent and happy a Conduct.'

Then the Lord Keeper of the Great Seal (by her Majeſty's Command) prorogued the Parliament until Tueſday the 21ſt Day of May next. The Parliament prorogued.

Anno 5 Ann. 1706.

Proceedings on the Union.

During this Receſs the grand Affair of the Union of the two Kingdoms took place; the firſt meeting of the Commiſſioners for that purpoſe being at the Cockpit, April 16. at which were preſent for Scotland the Earl of Seafield Lord Chancellor, Duke of Queensbury, Earl of Mar, Earl of Loudon, Earl of Sutherland, Earl of Wemyſs, Earl of Leven, Earl of Stair, Earl of Roſebury, Lord Archibald Campbel, Lord Viſcount Duplin, Lord Roſs, Lord Preſident of Seſſion, Lord Juſtice Clerk, Mr. Francis Montgomery, Sir Alex. Ogilvie, Sir Patrick Johnſton, Sir James Smollet, George Lockhart of Carnwath, William Seton of Pitmedden, John Clark, Daniel Stewart, Daniel Campbell.

Thoſe for England, who appeared on this ſolemn Occaſion, were the Lord Keeper, Lord High-Treaſurer, Lord Preſident, Lord Privy Seal, Duke of Somerſet, Duke of Bolton, Earl of Sunderland, Earl of Kingſton, Earl of Orford, Lord Viſcount Townſend, Lord Wharton, Lord Grey, Lord Powlet, Lord Somers, Marquiſs of Hartington, Sir Charles Hedges, Mr. Harley, Secretaries of State; Mr. Boyle, Lord Chief-Juſtice Holt, Lord Chief-Juſtice Trevor, Mr. Attorney-General, Mr. Sollicitor-General, Sir John Cook, Doctor Waller.

When after the Lords Commiſſioners for both Kingdoms had taken their Places, the Commiſſions were opened, and read by the reſpective Secretaries, and then the Lord-Keeper of the Great-Seal of England, addreſſing himſelf to the Lords Commiſſioners for Scotland, ſpoke in theſe Words.

Lord Keeper's Speech to the Scots Commiſſioners of the Union.

'My Lords, We the Commiſſioners appointed by her Majeſty, and authoriz'd by the Parliament of England to conſult and treat with your Lordſhips, as empowered in like manner, by her Majeſty and the Parliament of Scotland, concerning an Union of the two Kingdoms, and ſuch other things as we, the Commiſſioners on both Parts, ſhall think convenient and neceſſary for the Honour of her Majeſty, and the common Good of both Kingdoms, do apprehend there never was (in any Aſſembly of this nature) ſo little Occaſion as at preſent, for the Commiſſioners of England to give any verbal Aſſurances of their Zeal to promote and complete (ſo far as in their Power) the great and good Deſign we are met about, ſince it cannot be doubted, but that we bring along with us the ſame Sentiments, which ſo lately appeared in the Parliament of England, when they took care to manifeſt, by a ſolemn Act, that they did poſtpone all other Conſiderations to their evidencing a good and friendly Diſpoſition towards the Kingdom of Scotland.

'The Parliament of England, in making that unexpected Advance, ſeem'd reſolved, if poſſible to attain that Union, which

which hath been ſo long thought neceſſary, by all that wiſh well to the Proſperity of both Nations. Anno 5 Ann. 1706.

'And we moſt ſincerely aſſure your Lordſhips, that we accordingly meet your Lordſhips with Hearts fully reſolv'd to uſe our utmoſt Endeavour to remove all Difficulties in this Treaty, to prevent all Miſunderſtandings, to cheriſh and improve the good Diſpoſitions to one another we meet with, to have the general and joint Good of both Kingdoms ſolely in our View, and not the ſeparate of either, but to act as if we were already united in Intereſt, and had nothing left to conſider but what Settlements and Proviſions are moſt likely to conduce to the common Safety and Happineſs of this whole Iſland of Great-Britain.

'Which Meaſures, if purſued on both Parts, we hope may enable us to prepare ſuch Terms of Union as may prove ſatisfactory to her Majeſty and her Parliaments of both Kingdoms.'

To which the Earl of Seafield, Lord-High-Chancellor of Scotland, on the Part of the Lords Commiſſioners for that Kingdom, reply'd as followeth.

Anſwer'd by the Lord-Chancellor of Scotland.

'My Lords, the Lords Commiſſioners for Scotland have deſired me to aſſure your Lordſhips that they meet you on this Occaſion, with great Willingneſs and Satisfaction, to treat of an Union between the two Kingdoms, and of ſuch other Matters and Concerns as may be for her Majeſty's Honour, and the maintaining a good Underſtanding between the two Nations.

'We are convinced that an Union will be of great Advantage to both; the Proteſtant Religion will be thereby the more firmly ſecured; the Deſigns of our Enemies effectually diſappointed, and the Riches and Trade of the whole Iſland advanced.

'This Union has been often endeavoured, before and ſince the Kingdoms were united in Allegiance under one Sovereign; and ſeveral Treaties have been ſet on Foot for that End, tho' without the deſired Succeſs; but now we are hopeful that this ſhall be the happy Opportunity of accompliſhing it; her Majeſty hath frequently ſignified her good Inclinations towards it; and we are the more encouraged to expect Succeſs in this Treaty, by the good Diſpoſition which appeared in the Parliament of Scotland for it, and by the friendly Proceedings in the laſt Seſſion of the Parliament of England, which gave general Satisfaction. We have great Confidence in your Lordſhip's good Intentions, and we ſhall be ready on our Parts to enter into ſuch Meaſures with you as may bring the Treaty to ſuch a Concluſion as may be acceptable to her Majeſty, and to the Parliaments of both Kingdoms.'

Anno 5 Ann. 1706.

At their next Meeting, The Lord-Keeper, in the Name of the Lords-Commiſſioners for England, delivered to the Board certain Preliminary-Articles which were read as followeth, and afterwards agreed to:

Preliminary Articles of the Union-Treaty.

I. That all Propoſals made by either ſide, be made in Writing, and every Point agreed on ſhall be reduced into Writing.

II That no Point, tho' agreed on, and reduced into Writing, ſhall be Obligatory on either ſide, till all Matters be adjuſted in ſuch Manner as will be proper to be laid before the Queen and the two Parliaments for their Approbation.

III. That there be a Committee appointed, conſiſting of a certain Number of each Commiſſion to reviſe the Minutes of what paſſes, which are not to be inſerted by the Secretaries in their reſpective Books, but by Order of the ſaid Committee, having firſt made Report thereof to the reſpective Commiſſioners, and received their Approbation of the ſame.

IV. That all the Proceedings of the Commiſſioners of both Kingdoms, during the Treaty, be kept ſecret.

The Lord-Keeper alſo delivered to the Board the following Propoſals, which may be look'd upon as the Baſis of the Union.

First Propoſals by the Engliſh.

'That the two Kingdoms of England and Scotland be for ever united into one Kingdom by the Name of Great-Britain; That the United Kingdom of Great-Britain be repreſented by one and the ſame Parliament, and that the Succeſſion to the Monarchy of the united Kingdom of Great-Britain, in caſe of Failure of Heirs of her Majeſty's Body, be, according to the Limitations mentioned in an Act of Parliament, made in England, in the 12th and 13th Years of the late King William, entitled, *An Act for the further Limitation of the Crown, and the better ſecuring the Rights and Liberties of the Subjects.*'

May 9, Her Majeſty came to the Meeting, and being ſeated in her Chair, ſpoke to the Lords Commiſſioners as followeth:

'My Lords,

Queen's Speech to the Commiſſioners,

'I Am ſo much concern'd for the Union of the two Kingdoms, that I could not ſatisfy myſelf without coming, before I went out of Town, to ſee what Progreſs you had made in the Treaty, and to recommend very earneſtly to you the bringing it to a happy Concluſion, with as much Diſpatch as the Nature of it will admit; not doubting of the general Satisfaction which my Subjects of both Kingdoms will receive in finding you overcome all Difficulties to attain ſo great and public a Good.'

When her Majeſty had done ſpeaking, the Lord-Keeper deſired to know of her, if ſhe would be pleaſed to hear the Propoſals made on either ſide, and the Reſolutions hitherto taken thereupon, read by the reſpective Secretaries; which her Majeſty was pleaſed to allow of. Anno 5 Ann. 1706.

June 26, Her Majeſty came again to the Meeting, and being ſeated in her Chair, ſpoke to the Lords-Commiſſioners as follows:

'My Lords,

'I Am come hither once more to ſee what further Progreſs 'you have made in this Treaty, and to preſs a ſpeedy 'Concluſion of it, in regard my Servants of Scotland can-'not without great Inconvenience, be much longer abſent 'from that Kingdom.' Queen's ſecond Speech to the Commiſſioners.

After which, her Majeſty was pleaſed to direct, that the Proceedings of the Commiſſioners for both Kingdoms (from the time of her being here) ſhould be read, which was accordingly done by the reſpective Secretaries, and then her Majeſty went away.

July 23d, The Treaty being happily finiſh'd the Lords Commiſſioners for both Kingdoms went from the Cockpit to attend the Queen to St. James's, where the Lord-Keeper, in the Name of the Lords-Commiſſioners for England made the following Speech, and preſented to her Majeſty one of the ſigned and ſealed Inſtruments or Writings, containing the Articles of Union on the Part of England.

'May it pleaſe your Majeſty, We the Commiſſioners appointed by your Majeſty, in purſuance of the Act of Parliament paſſed in your Kingdom of England, to treat concerning an Union of the two Kingdoms, with the Commiſſioners for Scotland, do (according to our Duty) humbly beg leave to preſent to your Majeſty theſe the Effects of our continued and faithful Endeavours towards that End. Lord-Keeper's Speech to the Queen, upon preſenting the Articles of the Union.

'They are Articles agreed upon between your Commiſſioners of both Kingdoms, as the Terms or Conditions upon which the intended Union is to take Place, if your Majeſty, and the Parliaments of both Kingdoms ſhall think fit to approve and confirm the ſame.

'In theſe we have come to an Agreement on every Point, we judged neceſſary to effect a complete and laſting Union, and we have endeavoured not to ſtir into any Matter we had reaſon to think was not ſo.

'And altho' we have unanimouſly carried this Treaty thus far, purely from a Conviction, that we have done therein to God, your Majeſty, and our Countries good Service; yet we are far from thinking, that what we have done will

or,

Anno 5 Ann. 1706.

or ought to be of any Weight or Authority elſewhere; but do moſt entirely ſubmit theſe our Labours to the high Wiſdom of your Majeſty, and both your Parliaments, to ſtand or fall by the Reaſon, Juſtice, and public Utility on which they are founded.

'Your Majeſty's Royal Preſence and ſeaſonable Admonitions to us at the fitteſt Junctures were (we moſt thankfully acknowledge) a very great Encouragement and Aſſiſtance to us in the Difficulties we met with.

'Your Majeſty's Glory is already perfect, and the finiſhing this Work is all that is wanting to complete as well as ſecure the Happineſs of ſo great a People, as your Subjects may now without any Arrogance pretend to be.

'May your Majeſty live not only to give a Sanction of this univerſal Bleſſing to all your People, but alſo to ſee, in a long and proſperous Reign over us, the many immediate (or near) good Effects of it: But, as for that great and main Conſequence of it, for which your Majeſty is making, by a moſt gracious and charitable Foreſight, this only effectual Proviſion, I mean the Continuance of Peace and Tranquility in this Iſland, upon a Deſcent of the Crown inſtead of that Blood-ſhed and Diſtraction, which would probably follow upon the fatal Diviſion of it;

'May we be ſo happy, as never in our Days, to experiment the Fitneſs of theſe Meaſures your Majeſty is now taking for that End? But may late, very late Poſterity only, in that reſpect, reap the Advantage of them.'

This done the Lord Chancellor of Scotland in the Name of the Lords Commiſſioners for Scotland, made the following Speech, and preſented alſo to her Majeſty one of the ſign'd and ſeal'd Inſtruments or Writings, containing the Articles of Union on the Part of Scotland.

Lord Chancellor of Scotland's Speech to the Queen on the ſame Occaſion.

'May it pleaſe your Majeſty, the Commiſſioners appointed by your Majeſty for the Kingdom of Scotland, to treat of an Union of your two Kingdoms of Scotland and England, have commanded me to return your Majeſty their moſt humble and dutiful Acknowledgments, for the Honour your Majeſty has conferred on them, in employing them to negotiate this moſt important Affair, which is of the greateſt Conſequence to all your Majeſty's Subjects.

'We have endeavour'd to diſcharge this Truſt with all Fidelity, and are now come humbly to lay before your Majeſty, the Articles and Conditions of Union which we have treated of, and agreed upon, and do ſubmit them to your Royal Conſideration.

'It is a great Satisfaction to us, that what we have concluded in this matter, has been done with Unanimity; and we muſt own, that the Knowledge we had of your Majeſty's great Con-

Concern for uniting your two Kingdoms, and the Earneſtneſs with which your Majeſty has been moſt graciouſly pleaſed to recommend it, hath enabled us to bring this Treaty to a happy and ſpeedy Concluſion, to the mutual Satisfaction of the Commiſſioners on both ſides; and we ſhall eſteem it our greateſt Happineſs, if what we have prepared be acceptable to your Majeſty, and ratified by the Parliaments of both Kingdoms, without which, what we have done can be of no Authority. Anno 5 Ann. 1706.

'An Union of the two Kingdoms has been long wiſh'd for, it being ſo neceſſary for eſtabliſhing the laſting Peace, Happineſs and Proſperity of both Nations: And tho' it has been frequently endeavoured by your Majeſty's Royal Predeceſſors, without the deſired Succeſs; yet the glorious Succeſſes, with which God has bleſs'd your Majeſty's Endeavours for the Happineſs of your People, make us hope that this great Work is reſerved to be accompliſhed in your Majeſty's Reign.

After which, her Majeſty was graciouſly pleaſed to make the following Speech.

'My Lords,

'I Give you many Thanks for the great Pains you have taken in this Treaty, and am very well pleaſed to find your Endeavours and Applications have brought it to ſo good a Concluſion. The Particulars of it ſeem ſo reaſonable, that I hope they will meet with Approbation in the Parliaments of both Kingdoms. I wiſh therefore, that my Servants of Scotland may loſe no time in going down to propoſe it to my Subjects of that Kingdom: And I ſhall always look upon it as a particular Happineſs, if this Union (which will be ſo great a Security, and Advantage to both Kingdoms) can be accompliſhed in my Reign.' Queen's Speech, in Anſwer to both.

The END of the Third TOME.

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